INTERNATIONAL PROCUREMENT AND THE COMMERCIAL EFFECTS OF THE MULTILATERAL GOVERNMENT PROCUREMENT AGREEMENT

HEARING

BEFORE THE

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

MAY 19, 1994

Printed for the use of the Committee on Government Operations

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APPENDIX

INTERNATIONAL PROCUREMENT AND THE COMMERCIAL EFFECTS OF THE MULTILATERAL GOVERNMENT PROCUREMENT AGREEMENT

THURSDAY, MAY 19, 1994

HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2154, Rayburn House Office Building, Hon. John Conyers, Jr. (chairman of the subcommittee) presiding.

Present: Representatives John Conyers, Jr., Al McCandless, and William F. Clinger, Jr.

Also present: James C. Turner, staff director; Cheryl A. Phelps, professional staff member; Bennie B. Williams, clerk; and Jane O. Cobb, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN CONYERS

Mr. CONYERS. The subcommittee will come to order, please.

We are here today to continue the oversight of U.S. procurement policies and their impact upon the ability of American products and suppliers to compete fairly in global markets. We want to consider the achievements reached under the recently negotiated trade pacts governing international procurement, and also examine the title VII report identifying foreign governments engaged in procurement discrimination against U.S. companies.

This is the fifth annual report mandated by legislation that came from this committee in 1988. In the 5 years that we have exercised oversight of title VII, one concern has been foremost—ensuring that free trade is a two-way street with American firms provided access to markets in nations whose suppliers compete for U.S. procurement dollars.

We have heard in previous testimony from a number of American industries about unfair treatment that they suffer at the hands of many of our trading partners. In lieu of a multinational agreement protecting the rights of U.S. suppliers to compete across a wide array of sectors, effective enforcement of title VII has been critical in addressing the issue of fair access to international procurement markets.

Title VII is still a critical tool. However, for the first time, the committee has an opportunity to review the revised and expanded

trade pact that has long been held out as an answer to our access problems.

We have before us a renegotiated multilateral agreement on government procurement, one which, if approved, promises to greatly expand the scope and coverage of procurement markets here and abroad. We have a bilateral agreement with the European Union which sets out our obligations under the code, but also opens up some additional opportunities for United States firms.

Unfortunately, one significant sector in the European Union remains closed to free and fair competition. That, of course, is the telecommunications industry. Nevertheless, I am confident that the achievements reached under the new code are significant.

Our Trade Representative has been working long and hard at trying to shepherd this long-elusive trade agreement through its conclusion. We have a number of questions for him that are very important, but I will leave them for the question period.

Historically, the public sector procurement has been the most restrictive area of international trade because governments tend to favor domestic suppliers and usually shun their foreign competitors.

The elimination of discrimination in government purchases can open global procurement markets worth hundreds of billions of dollars. But if we are to allow foreign suppliers unfettered access to our markets, we must have real and reciprocal access to foreign markets.

From where I sit, it appears that too many government monopolies and protectionist trade policies continue to restrict competition by U.S. firms. I would like to explore those difficult issues with our distinguished witness, Ambassador Kantor, who is with us this morning. We welcome him.

Now I would like to recognize our ranking member on the committee, the gentleman from California, Mr. Al McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman. I would like to thank you for holding this important hearing to learn about the significant problems that U.S. companies face in trying to sell their goods or services to governments abroad.

Our Trade Representative himself is here today to explain the findings of title VII to Congress on foreign government procurement discrimination, which is received at the end of every April.

I might add, I extend a warm welcome to Ambassador Kantor and look forward to his testimony.

The Ambassador will also testify about recent progress in the negotiations with other GATT countries to expand opportunities for business to compete in foreign government procurement markets.

As he knows from the NAFTA negotiations, I am a strong supporter of expanded trade, and would like to congratulate Ambassador Kantor for a job well done in helping to conclude the GATT negotiations in Marrakech. However, as we had to fight for NAFTA, we may also have to fight hard for congressional approval of GATT.

The issue that looms large for GATT is a rather substantial one in that by law we are required to offset the losses with either tax increases or cuts in mandatory spending when the estimated tariff revenues are reduced.

I know I am not telling the Ambassador anything new, but I want to emphasize the position of a number of Republican Members that we do not want to see revenue increases to pay for a trade agreement.

On that note, I would mention that we do have a bill that has been introduced by Democratic Representative Parker, Republican Representative Ewing, together with other House Members, which would amend the pay-as-you-go legislation to allow the tax revenues generated naturally by the increase in economic activity that results from trade to be considered as an offset to the lost revenues from the lower tariffs at the border. I am somewhat intrigued by this concept and would like our witnesses to comment on that today.

I welcome Ambassador Kantor and the other witnesses here today, and look forward to the testimony.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you very much, Mr. McCandless.

The gentleman from Pennsylvania.

Mr. CLINGER. Thank you very much, Mr. Chairman.

The issues of fairness and openness in foreign government procurement are very important to the United States. Increased exports are a critical element in energizing our economy and creating higher-paying jobs and bringing a balance to our trade deficit. As we increase opportunities for foreign companies to compete in our markets, we must continue to do as much as possible to encourage other countries to continue to give us the same opportunities in their markets.

The issues here are advancements that the United States has made in increasing foreign procurements. And to that end, I would like to join my colleagues in welcoming our Trade Representative, who is here to report what has been very hard work in this area. He is going to give us the details of this year's title VII report which identifies no new countries but continues the 1992 identification of the European Union because of their continued discriminatory practices in the telecommunication sector and one that has been a longstanding problem for us and an irritant in our relations with the European Union.

While it is obviously very disappointing that no headway was made in opening markets in the European Union for our telecommunications companies, we want to recognize and congratulate Mr. Kantor for the very real progress made in expanding opportunities in the European Union for our heavy electrical sector, which I think was a significant step forward.

I serve as a member of the delegation that meets twice a year with parliamentarians from the European Union, and I would look forward to working with you, Mr. Ambassador, as we get ready for our next meeting to further our cause in the telecommunications area.

Significant gains have also been made on a multilateral basis with the countries that recently signed the GATT. And again, I think congratulations are due you, Mr. Ambassador, for helping to bring the GATT negotiations to a successful conclusion a few weeks ago. It was a historic achievement, and I welcome you this morning.

Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Mr. Clinger.

We welcome our U.S. Trade Representative, Michael Kantor, the President's chief advisor on international trade policies. He is a frequent visitor to this committee, and has been on the cutting edge of many important developments on foreign government procurement, NAFTA, and GATT. We are happy to have him begin this discussion today.

We have an important communication from you about protecting minority set-asides, which we will include in the record and hope you will comment on. We also have your statement, which will be included in its entirety in the record.

We will be delighted to have you begin and make a summary in your own way.

Good morning.

[The information referred to follows:]

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

May 19, 1994

The Honorable John Conyers
Chairman
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I wanted to confirm that the Agreement on Government Procurement, which I initialled on April 15, 1994, specifically excludes from coverage set-asides on behalf of small and minority businesses. This exclusion exempts from the Agreement's rules U.S. Government procurement programs such as those which give preference to small businesses, businesses controlled by women or socially and economically disadvantaged individuals, historically black colleges and universities and colleges and universities with substantial Hispanic or Native American enrollment.

These programs currently include, but are not limited to, those set forth in the following statutes: the Small Business Act, as amended (P.L. 85-536); section 1207 of the National Defense Authorization Act of 1987, as amended by subtitle A of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484); section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99-399); the Foreign Operations, Export Financing and Related Programs Appropriations Act for Fiscal Year 1989 (P.L. 100-461); appropriations for the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies for Fiscal Year 1991 (P.L. 101-507); appropriations for energy and water development for Fiscal Year 1993 (P.L. 102-377); sections 126, 136 and 301 of the Foreign Relations Authorization Act for fiscal year 1990 and 1991 (P.L. 101-246); sections 505(d) and 511(h) of the Airway and Airport Safety and Capacity Expansion Act of 1982, as amended (P.L. 97-248); section 106 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17); section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240); Title X of the Clear Air Act Amendments of 1990 (P.L. 101-549); section 3021 of the Energy Policy Act of 1992 (P.L. 102-486); and Title IV of the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991 (P.L. 102-233).

Sincerely,

Michael Kantor

STATEMENT OF MICHAEL KANTOR, AMBASSADOR, U.S. TRADE REPRESENTATIVE

Mr. KANTOR. Thank you, Mr. Chairman, Mr. McCandless and Mr. Clinger. Thank you very much for your kind and thoughtful remarks. And I would be delighted in the question period to respond to some of the details that you raise, very important details.

I want to thank you, Mr. Chairman, for this opportunity, and also for the years of personal kindnesses in our working together on many different issues. I have appreciated it. And I appreciate the opportunity to be here today.

This is the second time I have appeared formally before this committee on the issue of title VII, and much has occurred on the front of government procurement since I was last here a little less than a year ago. In this fairly short period of time we concluded multilateral negotiations on the new GATT Government Procurement Code, which all the Members noted, and a historic agreement with the European Union under this code.

I think that is probably as major an achievement as we have had, even including the NAFTA, frankly, and the Uruguay Round. It has not had much written about it, but I am sure in terms of opportunities for U.S. companies and eventual employment and high wage, high-skill jobs for American workers, it will make an enormous difference.

With our Mexican and Canadian partners, we implemented the NAFTA chapter on government procurement and spurred action by the Japanese Government to open its long closed construction part to government procurement. That was reached on January 19 of this year.

Before I discuss government procurement issues in detail, I would like to note just briefly for this subcommittee the importance of the Uruguay Round. This entire package signed by 125 countries, including the European Union in Marrakech on April 15, it took all day, in fact, for those 125 physically to sign the 22,000-page document.

It is a historic agreement. It will have enormous economic impact on our country. It is designed to be supportive of the strengths of our economy, an economy that is increasingly productive and competitive. We have never been in a better position to take advantage of the largest multilateral agreement in world history. In fact, the largest trade agreement in world history.

For the first time we bring new disciplines in the areas of agriculture, which opens up many markets which were heretofore not open to the United States, as well as enhances other markets that were open.

It goes to zero in many industrial products and lowers tariffs by 40 percent worldwide, although we only lower our tariffs by 33 percent and only 11 percent in textiles and apparel.

It protects intellectual property, which is one of the most important agreements, and it covers services for the first time. Services represent 60 percent of our businesses and 70 percent of our employment in this country, and they are the fastest growing sector of our international trade. And let me say we have a $40 billion surplus in our international trade in services. So that was an important aspect.

And, of course, we have adhered to the Congress' admonitions and direction under the 1988 Trade Act and have returned with a dispute settlement regime which we think is in the best interest of the United States, supported by three administrations: the Reagan administration, the Bush administration, and now, of course, President Clinton.

Economists estimate that when this Uruguay Round is fully operative, it will pump $100 to $200 billion a year into our economy. And DRI estimates that strictly because of the Uruguay Round we will have a net 1.4 million more jobs in this country at the end of 10 years than we do today, not due to natural growth, not due to what happens indirectly because of the Uruguay Round, but directly because of the Uruguay Round, 1.4 million more jobs.

And I think all of those commend this to the Congress to work with the administration on a bipartisan basis, as we have all of our trade agreements since we have been here, Mr. Chairman, to make sure that we ratify this agreement this year in order to continue to provide the kind of leadership we have provided to the world in expanding markets.

Turning now to this year's title VII report, we focus most of our attention on concerns with procurement practices in the medical technology and telecommunications sectors in Japan. Both of these sectors are priority sectors in our framework negotiations.

I would note that I just have come from the opening session with representatives of the Prime Minister of Japan at their insistence that we sit down and try to re-engage these framework targets, and, of course, government procurement and medical technology and telecommunications are a major part.

I think it would be unfortunate if we talked about the details of our discussions, and I hope that the committee would respect that. I think the fact that the Foreign Minister and the Prime Minister directed these officials to come here today and possibly tomorrow for discussions is at least a potential—potentially hopeful sign. We don't know where these talks will go.

We decided not to identify Japan at this time mainly as a result of my discussions with Prime Minister Hata, who was the Foreign Minister, on April 15, that we have made progress in Marrakech in discussing the framework agreement, not only in this area but in other areas as well.

And so we delayed by 60 days any identification of Japan. The President believed that was a responsible and careful way to approach a very difficult and delicate problem.

We decided in this year's title VII report to maintain the sanctions currently in force against the European Union for its discriminatory procurement practices in the telecommunications sector. While the agreement we reached with the European Union is an important achievement in our bilateral relations, the agreement reached on April 13 in Marrakech, we are disappointed we could not have gone further and concluded agreement on telecommunications as well.

Let me assure this committee that this administration will work with the Congress, both sides of the aisle, both bodies, to ensure we open up the telecommunications market in Europe.

Let me indicate that the German Government has decided not to—not to invoke the utilities directive, that the Greek and the Spanish and the Portuguese Governments have not as well. The other governments in Europe have not implemented it. Although it is something that we want to deal with, and deal with effectively, it has not been adopted, as you can see, by the entire European Union.

Finally, we included information in this year's report on four countries' practices which do not meet the criteria for identification under title VII but are areas of concern for us. The procurement practices of Japan with respect to supercomputers and computers topped this list of foreign countries. We plan to closely monitor developments in these markets to see that Japan adheres to our existing agreements. And we provide information on Australian practices on the information technology sector, and Brazil for recently enacted discriminatory practices in computer software, telecommunications and digital electronics sector, and China for its generally nontransparent procurement regime.

After many years of difficult negotiations, I am pleased to say that we have concluded a new GATT Government Procurement Code, as you know, which includes substantial coverage of subcentral governments and government-owned utilities. The cornerstone of this would be the bilateral coverage agreed to between the United States and the European Union on April 13, which I mentioned before.

In our negotiations with the European Union, negotiators focused on our State and city governments' elimination of Buy American requirements from federally funded mass transit, highway and airport projects. We would not open those up. We would not get rid of Buy American in these areas in order to get a telecommunications agreement, but we were able to obtain an agreement on heavy electrical equipment and in opening up central and subcentral government procurement which is worth, according to Deloitte Touche, hired by both entities, European Union and the United States, worth over $100 billion a year in new opportunities for United States companies. It is truly a historic agreement.

And as I said before, our companies have never been in a better position to take advantage of that agreement, not just large companies, I would like to add, but small and medium-sized companies as well.

And I would like to take this opportunity to commend Secretary Brown, our Administrator of the SBA, Mr. Bowles, and Mr. Brody, head of the Eximbank for their involvement with small and medium-sized businesses all over the country to allow them to take advantage not only of the NAFTA, not only the Uruguay Round when it is ratified by this Congress, but also of this agreement.

Those activities have been long needed and will make a big difference, frankly, to us economically in this country, not only to these businesses, but to the country as a whole.

Let me make a couple of—if I might, Mr. Chairman—specific remarks about the status of negotiation with the European Union on telecommunications. I think it is very important to this committee.

Ending the discrimination in Europe applied to our telecommunications equipment was a top priority of our negotiations in Marra-

kech. Despite the fact that our market is open, the European Union demanded other unrelated concessions on Federal Buy American programs.

We have not given up obtaining nondiscriminatory access to the European telecommunications market. This is a critical industry to the United States. In that connection I would like to make a few points. One, the sanctions we imposed in May 1993 under title VII of the 1988 Trade Act remain in place.

Two, four European Union countries have assured us that we will receive nondiscriminatory access.

And, three, we intend to re-engage the European Union on telecommunications. We do not yet have a date; however, we are looking for appropriate dates for starting discussion within the coming months, although on April 24, Sir Leon Britain was in the United States. I had a long meeting with him and this was a major area of discussion.

Last, we have restarted our interagency process to evaluate our options in light of continued European Union refusal to open this market. We would like to continue our very fruitful discussions with the Congress as well. They have been helpful to us and we would like to take advantage of your good counsel on both sides of the aisle as we proceed forward.

The administration this year achieved several breakthroughs in negotiation of government procurement that have proven very elusive in years past. Title VII has been very useful in realizing these goals.

We plan to continue to use title VII and other trade policy tools in the coming year with the objective of completing a full panoply of trade agreements for government procurement in the areas that we have highlighted in this year's report and past reports. This administration's goal is to virtually make title VII obsolete through the conclusion of such agreements.

However, let me make it clear. We believe title VII is vital. It has been effective. This committee has been extremely helpful in supporting title VII, and we look forward to working with you in the coming years to make sure it remains effective as we attempt to open up more and more markets in government procurement.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Kantor follows:]

Testimony before the Legislation and National Security Subcommittee of the Committee on Government Operations

of

AMBASSADOR MICHAEL KANTOR

UNITED STATES TRADE REPRESENTATIVE

1994 Title VII Review of
Foreign Country Procurement Discrimination
Against U.S. Goods or Services
and
Multilateral and Bilateral International Trade
Negotiations on Government Procurement

May 19, 1994

I would like to thank you, Mr. Chairman, and the members of this Subcommittee for the opportunity today to describe Administration efforts to open foreign government procurement markets to U.S. suppliers through use of Title VII of the Omnibus Trade and Competitiveness Act of 1988 and multilateral and bilateral negotiations on government procurement. This is the second time I have testified before this Subcommittee on government procurement, and much has occurred on this front since I last testified on this issue less than a year ago.

In this short period, we have concluded multilateral negotiations on a new GATT Government Procurement Code and an historic agreement with the European Union, reached in Marrakech, Morocco, under this new Code. With our Mexican and Canadian partners, we have implemented the NAFTA chapter on government procurement. We have also used the tools provided under Title VII to spur action by the Japanese government to open its construction market. Finally, we have opened new dialogues with other countries in an effort to open foreign government procurement markets. I would also like to emphasize that we will continue to pursue a telecommunications procurement agreement with the European Union and seek more open government procurement markets in Japan under the Framework negotiations.

Today I will review our findings in the 1994 Title VII report, which was transmitted to this Subcommittee on April 30, and discuss in detail negotiations on the GATT Code and specifically with the European Union. But before I discuss these issues, I would like to note briefly for the Committee the importance of the entire package of Uruguay Round Agreements.

When 125 countries signed the Uruguay Round Agreement in Marrakech last month, they concluded the largest, most

comprehensive trade agreement in history. The Uruguay Round Agreement plays to the strengths of the U.S. economy since it opens world markets in areas where we are most competitive and will be an important element in an integrated national economic strategy. Economists estimate that increased trade from the Uruguay Round Agreement will pump between $100 billion and $200 billion annually into the U.S. economy once it is fully implemented. A study by DRI/McGraw Hill estimated that the net U.S. employment gain over and above the normal growth of the U.S. economy will be about 1.4 million jobs by the tenth year after implementation.

The 1994 Title VII Review

As in past Title VII reviews, the Administration used all available information on the procurement practices of foreign countries. In addition to the data we had developed in past Title VII reviews, we relied on updated reports from our embassies and comments from the private sector responding to our notices in the Federal Register and the Commerce Business Daily. We also used information collected for the annual National Trade Estimates Report.

In this year's report, we have focused most of our attention on concerns with procurement practices in the medical technology and telecommunications sectors in Japan. Both of these sectors are priority sectors in the U.S.-Japan Framework negotiations. In our report, we noted that we had decided not to identify Japan at this time and would revisit this decision by June 30. In both of these sectors, foreign suppliers have found that gaining market access has been an uphill battle.

We were not able to reach agreement on these sectors by the February 11 meeting of the President and former Japanese Prime Minister Hosokawa. On March 28, the Government of Japan issued an Action Plan on Government Procurement containing detailed sections on telecommunications and medical technology. This Action Plan reflected some modest movement towards addressing U.S. concerns but did not provide a basis for resuming the Framework negotiations. On April 15, I met with the former Foreign Minister and now Prime Minister Hata in Marrakech, Morocco to discuss, among other issues, the possibilities for resuming the Framework negotiations. While we made some progress in these discussions, we are now awaiting a Japanese response to the points I raised at this meeting. A Japanese delegation has just arrived in Washington to explore ways for informally restarting the Framework talks. In deciding whether to identify Japan under Title VII by June 30, we will assess the seriousness of any official Japanese response.

We also decided in this year's Title VII report to maintain the sanctions currently in force against the European Union for

its discriminatory procurement practices in the telecommunications sector. These sanctions, which were first imposed on May 28, 1993, emcompass the full range of potential sanctions on civilian procurements provided for under Title VII, consistent with U.S. obligations under the Code and the bilateral U.S.-EU MOU on Government Procurement. While we believe that the agreement we reached with the European Union in Marrakech on April 15 should be viewed as an important achievement in our bilateral relations, we are still disappointed that we could not have gone further and concluded an agreement on telecommunications as well.

Finally, we included information in this year's report on four countries' procurement practices, which do not meet the criteria for identification under Title VII but, nevertheless, are areas of concern. The procurement practices of Japan with respect to supercomputers and computers are at the top of this list. We plan to closely monitor developments in these procurement markets to see that Japan adheres to our existing agreements on these sectors. Additionally, we provided information on Australia for its practices in the information technology sector; Brazil for its recently enacted discriminatory requirements in the computer, software, telecommunications and digital electronics sectors; and China for its generally non-transparent procurement regime.

We also included in this year's report the General Report called for under Title VII, tracking the history of our use of the statute to root out foreign discriminatory procurement practices.

The New GATT Procurement Code and the Marrakech Agreement with the EU

After many years of difficult negotiations, I am pleased to say that we have concluded a new GATT Government Procurement Code, which includes substantial coverage of subcentral governments and government-owned utilities. The cornerstone of this new Code will be the bilateral coverage agreed between the United States and European Union on April 13 in Marrakech, Morocco, just before the signing of the new Code.

This new Code, which is scheduled to enter into force on January 1, 1996, is a step forward in multilateral negotiations on government procurement and an improvement over the existing Procurement Code. It will translate into many billions of dollars worth of new bidding opportunities for U.S. firms, with corresponding benefits for U.S. products and services.

As you know, the existing Procurement Code, negotiated during the Tokyo Round, is very limited, covering only procurement of goods by central government entities. The Code

has been an important agreement in filling the hole left by the GATT, which does not cover government procurement, but the Code does not cover some of the most commercially attractive areas of procurement, in particular, government-owned utilities. Since shortly after the conclusion of negotiations on the existing Code in the Tokyo Round, we have been seeking access to these huge procurement markets, especially the heavy electrical and telecom markets. We have also been interested in joining other participating countries in beginning to cover subcentral government entities under the Code.

This past December in Geneva we made an important step towards completing a comprehensive new Code but were not able to conclude a final agreement with the European Union. On December 15, when the multilateral negotiations on the new Code effectively ended, the United States and European Union had only agreed to cover central government procurement and to continue working towards completing a bigger agreement including subcentral governments and utilities by April 15, 1994, the scheduled signature date for the new Code agreement.

Negotiations over several years in Geneva on the Code were very important in spurring the United States and European Union to reach a final Code agreement. First of all, the countries participating in the negotiations agreed to substantial changes in some of the procedural provisions of the Code. Most importantly, the new Code will require all Parties to provide independent bid challenge procedures for all covered procurements. This means that U.S. suppliers will have a legal remedy, guaranteed by the new Code agreement, in these other countries and will not have to rely solely on the dispute settlement provisions of the agreement. The new Code also imposes new, more stringent disciplines on the use of offsets, which are often used by developing countries to require local content, local investment or technology transfer in connection with government contracts.

In terms of coverage of the new Code, it has been extended to services, including construction, and to subcentral government entities and government-owned utilities for the first time, but only on the basis of reciprocity. As a result, we were able to specify derogations from most-favored-nation treatment so that we lost no leverage in continuing to seek coverage of U.S. priorities in the procurement markets of other countries. For example, we have agreed to cover our state governments and our government-owned utilities only with respect to Korea, Israel and--as a result of our agreement in Marrakech--the European Union. We leave open the possibility, however, of extending coverage with other countries through bilateral negotiations on reciprocity in the future. In negotiating coverage with all countries, we have protected U.S. procurement programs for small and minority-owned businesses and other economically-

disadvantaged groups, administered at both the state and Federal levels.

In our negotiations with the European Union between December 15 and April 15, EU negotiators focused on U.S. coverage of state and city governments and elimination of Buy American requirements on Federally-funded mass transit, highway and airport projects, while we sought coverage of the EU power generation sector and a substantial value of EU subcentral procurement under the Code and conclusion of a separate bilateral agreement on telecommunications. The agreement reached in Marrakech, Morocco on April 13, is clearly the boldest step that either party has ever taken in negotiations on government procurement, even though it falls short of including all objectives on both sides. As I noted before, we are disappointed that we could not conclude an agreement on telecommunications, but we were also determined that access to this EU market not be linked to Buy American restrictions in unrelated markets, such as mass transit and highways.

From a U.S. perspective, the agreement is historic in covering the EU electrical sector, valued at approximately $28 billion, permanently under the Code. This sector has been closed to U.S. suppliers for nearly four decades. The U.S.-EU MOU, signed on May 25, 1993, gave U.S. suppliers access to this market, but only temporarily for two years. Two years is a very short period in the heavy electrical sector.

As a result of this agreement, we also got coverage of over $50 billion in EU central government procurement, $23 billion in EU subcentral procurement of goods and $700 million in procurement by EU ports. According to data developed by the independent consulting firm of Deloitte Touche, the total value of EU coverage under the Code will exceed $100 billion annually in bidding opportunities.

In addition to procurement by U.S. executive branch agencies, the United States agreed to cover 37 states, the Federal power authorities and several subcentral government utilities under the Code. U.S. coverage of subcentral governments and utilities was based on the voluntary commitment of these jurisdictions to be included in the agreement. In addition to the approximately $20 billion credited in the agreement to U.S. investor-owned electrical utilities, U.S. coverage under the Code will total approximately $80 billion.

On a purely bilateral basis, we also agreed that two additional states and seven cities would treat EU suppliers no less favorably than non-state or non-local U.S. suppliers. This commitment will not be subject to Code procedures or dispute settlement.

Status of Negotiations with the EU on Telecommunications Procurement

Ending the discrimination in Europe applied to our telecommunications equipment was a top priority of these negotiations. As you know, the U.S. market is completely open to foreign firms; indeed, foreign-owned firms supplied 54 percent of our central office switching market in 1992.

Despite the fact that our market is open, the European Union demanded other, unrelated, concessions in exchange for opening its telecommunications market. Central to these demands was the elimination of all Buy America programs associated with Federal funds granted to our states and cities for mass transit, highways, airport improvement and wastewater projects, among others. We were unwilling to agree to these demands, which we considered unjustified given the European Union's access to our telecommunications market.

We certainly have not given up on obtaining non-discriminatory access to the European telecommunications market. This is a critical industry to the United States, and the imbalance of opportunities in the United States and the European Union remains unacceptable to us. In that connection, I'd like to make a few points:

- First, the sanctions we imposed in May of 1993 under Title VII of the 1988 Trade Act remain in place.

- Second, four EU countries have assured us that we will receive non-discriminatory access to their markets: Germany, Greece, Spain, and Portugal.

- Third, we do intend to re-engage the European Union on telecom. We have not set a date; however, we are looking for appropriate dates to restart discussions within the coming months.

- Fourth, we have restarted our interagency process to evaluate our options in light of continued European Union refusal to open this market. We intend to consult with Congress on this matter as well.

Other Developments

In last year's Title VII report we identified Japan for its discriminatory practices in construction. I am happy to report that we were able to successfully resolve this issue with Japan in January of this year. The Japanese government unilaterally opened its construction market and agreed to consult with us on an annual basis on progress made. We have also started implementation of the NAFTA Government Procurement Chapter, which

opens the Mexican government procurement market for the first time. We will be following Mexican and Canadian implementation closely to ensure that the full potential benefits flow to U.S. firms.

The Impact of the Agreement on Government Revenues

It is extremely difficult to quantify the exact effect of the new Code agreement on U.S. government revenues, but we are certain that the agreement can only increase these revenues. There will be no lifting or easing of any revenue-raising measures and procurement budgets should fall as a result of the agreement since competition among bidders on U.S. government contracts will increase.

Conclusion

The Administration this year achieved several breakthroughs in negotiations on government procurement that had proven very elusive for many years. After nearly seven years of negotiations, the United States and other countries concluded a new, hugely-expanded GATT Government Procurement Code. As part of this new Code, the United States and European Union reached agreement on permanent coverage of one of our highest priority sectors--the heavy electrical sector. Title VII has been useful in realizing these goals. We plan to continue to use Title VII and other trade policy tools in the coming year with the objective of completing a full panoply of trade agreements on government procurement in the areas we have highlighted in this year's report and in past reports. This Administration's goal is to have virtually made Title VII obsolete through the conclusion of such agreements by the time of the scheduled sunset of Title VII in 1996.

AGREEMENT ON
GOVERNMENT PROCUREMENT

ACCORD SUR
LES MARCHES PUBLICS

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AGREEMENT ON GOVERNMENT PROCUREMENT

Parties to this Agreement (hereinafter referred to as "Parties"),

Recognizing the need for an effective multilateral framework of rights and obligations with respect to laws, regulations, procedures and practices regarding government procurement with a view to achieving greater liberalization and expansion of world trade and improving the international framework for the conduct of world trade;

Recognizing that laws, regulations, procedures and practices regarding government procurement should not be prepared, adopted or applied to foreign or domestic products and services and to foreign or domestic suppliers so as to afford protection to domestic products or services or domestic suppliers and should not discriminate among foreign products or services or among foreign suppliers;

Recognizing that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement;

Recognizing the need to establish international procedures on notification, consultation, surveillance and dispute settlement with a view to ensuring a fair, prompt and effective enforcement of the international provisions on government procurement and to maintain the balance of rights and obligations at the highest possible level;

Recognizing the need to take into account the development, financial and trade needs of developing countries, in particular the least-developed countries;

Desiring, in accordance with paragraph 6(b) of Article IX of the Agreement on Government Procurement done on 12 April 1979, as amended on 2 February 1987, to broaden and improve the Agreement on the basis of mutual reciprocity and to expand the coverage of the Agreement to include service contracts;

Desiring to encourage acceptance of and accession to this Agreement by governments not party to it;

Having undertaken further negotiations in pursuance of these objectives;

Hereby *agree* as follows:

Article I

Scope and Coverage

1. This Agreement applies to any law, regulation, procedure or practice regarding any procurement by entities covered by this Agreement, as specified in Appendix I.[1]

2. This Agreement applies to procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of products and services.

3. Where entities, in the context of procurement covered under this Agreement, require enterprises not included in Appendix I to award contracts in accordance with particular requirements, Article III shall apply *mutatis mutandis* to such requirements.

4. This Agreement applies to any procurement contract of a value of not less than the relevant threshold specified in Appendix I.

Article II

Valuation of Contracts

1. The following provisions shall apply in determining the value of contracts[2] for purposes of implementing this Agreement.

2. Valuation shall take into account all forms of remuneration, including any premiums, fees, commissions and interest receivable.

3. The selection of the valuation method by the entity shall not be used, nor shall any procurement requirement be divided, with the intention of avoiding the application of this Agreement.

4. If an individual requirement for a procurement results in the award of more than one contract, or in contracts being awarded in separate parts, the basis for valuation shall be either:

(a) the actual value of similar recurring contracts concluded over the previous fiscal year or 12 months adjusted, where possible, for anticipated changes in quantity and value over the subsequent 12 months; or

(b) the estimated value of recurring contracts in the fiscal year or 12 months subsequent to the initial contract.

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[1]For each Party, Appendix I is divided into five Annexes:
- Annex 1 contains central government entities.
- Annex 2 contains sub-central government entities.
- Annex 3 contains all other entities that procure in accordance with the provisions of this Agreement.
- Annex 4 specifies services, whether listed positively or negatively, covered by this Agreement.
- Annex 5 specifies covered construction services.

Relevant thresholds are specified in each Party's Annexes.

[2]This Agreement shall apply to any procurement contract for which the contract value is estimated to equal or exceed the threshold at the time of publication of the notice in accordance with Article IX.

5. In cases of contracts for the lease, rental or hire purchase of products or services, or in the case of contracts which do not specify a total price, the basis for valuation shall be:

(a) in the case of fixed-term contracts, where their term is 12 months or less, the total contract value for their duration, or, where their term exceeds 12 months, their total value including the estimated residual value;

(b) in the case of contracts for an indefinite period, the monthly instalment multiplied by 48.

If there is any doubt, the second basis for valuation, namely (b), is to be used.

6. In cases where an intended procurement specifies the need for option clauses, the basis for valuation shall be the total value of the maximum permissible procurement, inclusive of optional purchases.

Article III

National Treatment and Non-discrimination

1. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall provide immediately and unconditionally to the products, services and suppliers of other Parties offering products or services of the Parties, treatment no less favourable than:

(a) that accorded to domestic products, services and suppliers; and

(b) that accorded to products, services and suppliers of any other Party.

2. With respect to all laws, regulations, procedures and practices regarding government procurement covered by this Agreement, each Party shall ensure:

(a) that its entities shall not treat a locally-established supplier less favourably than another locally-established supplier on the basis of degree of foreign affiliation or ownership, and

(b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the good or service being supplied, provided that the country of production is a Party to the Agreement in accordance with the provisions of Article IV.

3. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than laws, regulations, procedures and practices regarding government procurement covered by this Agreement

Article IV

Rules of Origin

1. A Party shall not apply rules of origin to products or services imported or supplied for purposes of government procurement covered by this Agreement from other Parties, which are different from

the rules of origin applied in the normal course of trade and at the time of the transaction in question to imports or supplies of the same products or services from the same Parties.

2. Following the conclusion of the work programme for the harmonization of rules of origin for goods to be undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization (hereinafter referred to as "WTO Agreement") and negotiations regarding trade in services, Parties shall take the results of that work programme and those negotiations into account in amending paragraph 1 as appropriate.

Article V

Special and Differential Treatment for Developing Countries

Objectives

1. Parties shall, in the implementation and administration of this Agreement, through the provisions set out in this Article, duly take into account the development, financial and trade needs of developing countries, in particular least-developed countries, in their need to:

(a) safeguard their balance-of-payments position and ensure a level of reserves adequate for the implementation of programmes of economic development;

(b) promote the establishment or development of domestic industries including the development of small-scale and cottage industries in rural or backward areas; and economic development of other sectors of the economy;

(c) support industrial units so long as they are wholly or substantially dependent on government procurement; and

(d) encourage their economic development through regional or global arrangements among developing countries presented to the Ministerial Conference of the World Trade Organization (hereinafter referred to as the "WTO") and not disapproved by it.

2. Consistently with the provisions of this Agreement, each Party shall, in the preparation and application of laws, regulations and procedures affecting government procurement, facilitate increased imports from developing countries, bearing in mind the special problems of least-developed countries and of those countries at low stages of economic development.

Coverage

3. With a view to ensuring that developing countries are able to adhere to this Agreement on terms consistent with their development, financial and trade needs, the objectives listed in paragraph 1 shall be duly taken into account in the course of negotiations with respect to the procurement of developing countries to be covered by the provisions of this Agreement. Developed countries, in the preparation of their coverage lists under the provisions of this Agreement, shall endeavour to include entities procuring products and services of export interest to developing countries.

Agreed Exclusions

4. A developing country may negotiate with other participants in negotiations under this Agreement mutually acceptable exclusions from the rules on national treatment with respect to certain entities.

products or services that are included in its coverage lists, having regard to the particular circumstances of each case. In such negotiations, the considerations mentioned in subparagraphs 1(a) through 1(c) shall be duly taken into account. A developing country participating in regional or global arrangements among developing countries referred to in subparagraph 1(d) may also negotiate exclusions to its lists, having regard to the particular circumstances of each case, taking into account, *inter alia*, the provisions on government procurement provided for in the regional or global arrangements concerned and, in particular, products or services which may be subject to common industrial development programmes.

5. After entry into force of this Agreement, a developing country Party may modify its coverage lists in accordance with the provisions for modification of such lists contained in paragraph 6 of Article XXIV, having regard to its development, financial and trade needs, or may request the Committee on Government Procurement (hereinafter referred to as "the Committee") to grant exclusions from the rules on national treatment for certain entities, products or services that are included in its coverage lists, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraphs 1(a) through 1(c). After entry into force of this Agreement, a developing country Party may also request the Committee to grant exclusions for certain entities, products or services that are included in its coverage lists in the light of its participation in regional or global arrangements among developing countries, having regard to the particular circumstances of each case and taking duly into account the provisions of subparagraph 1(d). Each request to the Committee by a developing country Party relating to modification of a list shall be accompanied by documentation relevant to the request or by such information as may be necessary for consideration of the matter.

6. Paragraphs 4 and 5 shall apply *mutatis mutandis* to developing countries acceding to this Agreement after its entry into force.

7. Such agreed exclusions as mentioned in paragraphs 4, 5 and 6 shall be subject to review in accordance with the provisions of paragraph 14 below.

Technical Assistance for Developing Country Parties

8. Each developed country Party shall, upon request, provide all technical assistance which it may deem appropriate to developing country Parties in resolving their problems in the field of government procurement.

9. This assistance, which shall be provided on the basis of non-discrimination among developing country Parties, shall relate, *inter alia*, to:

- the solution of particular technical problems relating to the award of a specific contract: and

- any other problem which the Party making the request and another Party agree to deal with in the context of this assistance.

10. Technical assistance referred to in paragraphs 8 and 9 would include translation of qualification documentation and tenders made by suppliers of developing country Parties into an official language of the WTO designated by the entity, unless developed country Parties deem translation to be burdensome, and in that case explanation shall be given to developing country Parties upon their request addressed either to the developed country Parties or to their entities.

Information Centres

11. Developed country Parties shall establish, individually or jointly, information centres to respond to reasonable requests from developing country Parties for information relating to, *inter alia*, laws,

regulations, procedures and practices regarding government procurement, notices about intended procurements which have been published, addresses of the entities covered by this Agreement, and the nature and volume of products or services procured or to be procured, including available information about future tenders. The Committee may also set up an information centre.

Special Treatment for Least-Developed Countries

12. Having regard to paragraph 6 of the Decision of the CONTRACTING PARTIES to GATT 1947 of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (BISD 26S/203-205), special treatment shall be granted to least-developed country Parties and to the suppliers in those Parties with respect to products or services originating in those Parties, in the context of any general or specific measures in favour of developing country Parties. A Party may also grant the benefits of this Agreement to suppliers in least-developed countries which are not Parties, with respect to products or services originating in those countries.

13. Each developed country Party shall, upon request, provide assistance which it may deem appropriate to potential tenderers in least-developed countries in submitting their tenders and selecting the products or services which are likely to be of interest to its entities as well as to suppliers in least-developed countries, and likewise assist them to comply with technical regulations and standards relating to products or services which are the subject of the intended procurement.

Review

14. The Committee shall review annually the operation and effectiveness of this Article and, after each three years of its operation on the basis of reports to be submitted by Parties, shall carry out a major review in order to evaluate its effects. As part of the three-yearly reviews and with a view to achieving the maximum implementation of the provisions of this Agreement, including in particular Article III, and having regard to the development, financial and trade situation of the developing countries concerned, the Committee shall examine whether exclusions provided for in accordance with the provisions of paragraphs 4 through 6 of this Article shall be modified or extended.

15. In the course of further rounds of negotiations in accordance with the provisions of paragraph 7 of Article XXIV, each developing country Party shall give consideration to the possibility of enlarging its coverage lists, having regard to its economic, financial and trade situation.

Article VI

Technical Specifications

1. Technical specifications laying down the characteristics of the products or services to be procured, such as quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling, or the processes and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities, shall not be prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

2. Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be in terms of performance rather than design or descriptive characteristics; and

(b) be based on international standards, where such exist; otherwise, on national technical regulations[3], recognized national standards[4], or building codes.

3. There shall be no requirement or reference to a particular trademark or trade name, patent, design or type, specific origin, producer or supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation.

4. Entities shall not seek or accept, in a manner which would have the effect of precluding competition, advice which may be used in the preparation of specifications for a specific procurement from a firm that may have a commercial interest in the procurement.

Article VII

Tendering Procedures

1. Each Party shall ensure that the tendering procedures of its entities are applied in a non-discriminatory manner and are consistent with the provisions contained in Articles VII through XVI.

2. Entities shall not provide to any supplier information with regard to a specific procurement in a manner which would have the effect of precluding competition.

3. For the purposes of this Agreement:

(a) Open tendering procedures are those procedures under which all interested suppliers may submit a tender.

(b) Selective tendering procedures are those procedures under which, consistent with paragraph 3 of Article X and other relevant provisions of this Agreement, those suppliers invited to do so by the entity may submit a tender.

(c) Limited tendering procedures are those procedures where the entity contacts suppliers individually, only under the conditions specified in Article XV.

Article VIII

Qualification of Suppliers

In the process of qualifying suppliers, entities shall not discriminate among suppliers of other Parties or between domestic suppliers and suppliers of other Parties. Qualification procedures shall be consistent with the following:

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[3]For the purpose of this Agreement, a technical regulation is a document which lays down characteristics of a product or a service or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

[4]For the purpose of this Agreement, a standard is a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or services or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, service, process or production method.

(a) any conditions for participation in tendering procedures shall be published in adequate time to enable interested suppliers to initiate and, to the extent that it is compatible with efficient operation of the procurement process, complete the qualification procedures;

(b) any conditions for participation in tendering procedures shall be limited to those which are essential to ensure the firm's capability to fulfil the contract in question. Any conditions for participation required from suppliers, including financial guarantees, technical qualifications and information necessary for establishing the financial, commercial and technical capacity of suppliers, as well as the verification of qualifications, shall be no less favourable to suppliers of other Parties than to domestic suppliers and shall not discriminate among suppliers of other Parties. The financial, commercial and technical capacity of a supplier shall be judged on the basis both of that supplier's global business activity as well as of its activity in the territory of the procuring entity, taking due account of the legal relationship between the supply organizations;

(c) the process of, and the time required for, qualifying suppliers shall not be used in order to keep suppliers of other Parties off a suppliers' list or from being considered for a particular intended procurement. Entities shall recognize as qualified suppliers such domestic suppliers or suppliers of other Parties who meet the conditions for participation in a particular intended procurement. Suppliers requesting to participate in a particular intended procurement who may not yet be qualified shall also be considered, provided there is sufficient time to complete the qualification procedure;

(d) entities maintaining permanent lists of qualified suppliers shall ensure that suppliers may apply for qualification at any time; and that all qualified suppliers so requesting are included in the lists within a reasonably short time;

(e) if, after publication of the notice under paragraph 1 of Article IX, a supplier not yet qualified requests to participate in an intended procurement, the entity shall promptly start procedures for qualification;

(f) any supplier having requested to become a qualified supplier shall be advised by the entities concerned of the decision in this regard. Qualified suppliers included on permanent lists by entities shall also be notified of the termination of any such lists or of their removal from them;

(g) each Party shall ensure that:

(i) each entity and its constituent parts follow a single qualification procedure, except in cases of duly substantiated need for a different procedure; and

(ii) efforts be made to minimize differences in qualification procedures between entities.

(h) nothing in subparagraphs (a) through (g) shall preclude the exclusion of any supplier on grounds such as bankruptcy or false declarations, provided that such an action is consistent with the national treatment and non-discrimination provisions of this Agreement.

Article IX

Invitation to Participate Regarding Intended Procurement

1. In accordance with paragraphs 2 and 3, entities shall publish an invitation to participate for all cases of intended procurement, except as otherwise provided for in Article XV (limited tendering). The notice shall be published in the appropriate publication listed in Appendix II.

2. The invitation to participate may take the form of a notice of proposed procurement, as provided for in paragraph 6.

3. Entities in Annexes 2 and 3 may use a notice of planned procurement, as provided for in paragraph 7, or a notice regarding a qualification system, as provided for in paragraph 9, as an invitation to participate.

4. Entities which use a notice of planned procurement as an invitation to participate shall subsequently invite all suppliers who have expressed an interest to confirm their interest on the basis of information which shall include at least the information referred to in paragraph 6.

5. Entities which use a notice regarding a qualification system as an invitation to participate shall provide, subject to the considerations referred to in paragraph 4 of Article XVIII and in a timely manner, information which allows all those who have expressed an interest to have a meaningful opportunity to assess their interest in participating in the procurement. This information shall include the information contained in the notices referred to in paragraphs 6 and 8, to the extent such information is available. Information provided to one interested supplier shall be provided in a non-discriminatory manner to the other interested suppliers.

6. Each notice of proposed procurement, referred to in paragraph 2, shall contain the following information:

(a) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent tender notices for the products or services to be procured;

(b) whether the procedure is open or selective or will involve negotiation;

(c) any date for starting delivery or completion of delivery of goods or services;

(d) the address and final date for submitting an application to be invited to tender or for qualifying for the suppliers' lists, or for receiving tenders, as well as the language or languages in which they must be submitted;

(e) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;

(f) any economic and technical requirements, financial guarantees and information required from suppliers;

(g) the amount and terms of payment of any sum payable for the tender documentation; and

(h) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.

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7. Each notice of planned procurement referred to in paragraph 3 shall contain as much of the information referred to in paragraph 6 as is available. It shall in any case include the information referred to in paragraph 8 and:

(a) a statement that interested suppliers should express their interest in the procurement to the entity;

(b) a contact point with the entity from which further information may be obtained.

8. For each case of intended procurement, the entity shall publish a summary notice in one of the official languages of the WTO. The notice shall contain at least the following information:

(a) the subject matter of the contract;

(b) the time-limits set for the submission of tenders or an application to be invited to tender; and

(c) the addresses from which documents relating to the contracts may be requested.

9. In the case of selective tendering procedures, entities maintaining permanent lists of qualified suppliers shall publish annually in one of the publications listed in Appendix III a notice of the following:

(a) the enumeration of the lists maintained, including their headings, in relation to the products or services or categories of products or services to be procured through the lists;

(b) the conditions to be fulfilled by suppliers with a view to their inscription on those lists and the methods according to which each of those conditions will be verified by the entity concerned; and

(c) the period of validity of the lists, and the formalities for their renewal.

When such a notice is used as an invitation to participate in accordance with paragraph 3, the notice shall, in addition, include the following information:

(d) the nature of the products or services concerned;

(e) a statement that the notice constitutes an invitation to participate.

However, when the duration of the qualification system is three years or less, and if the duration of the system is made clear in the notice and it is also made clear that further notices will not be published, it shall be sufficient to publish the notice once only, at the beginning of the system. Such a system shall not be used in a manner which circumvents the provisions of this Agreement.

10. If, after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation, it becomes necessary to amend or re-issue the notice, the amendment or the re-issued notice shall be given the same circulation as the original documents upon which the amendment is based. Any significant information given to one supplier with respect to a particular intended procurement shall be given simultaneously to all other suppliers concerned in adequate time to permit the suppliers to consider such information and to respond to it.

11. Entities shall make clear, in the notices referred to in this Article or in the publication in which the notices appear, that the procurement is covered by the Agreement.

Article X

Selection Procedures

1. To ensure optimum effective international competition under selective tendering procedures, entities shall, for each intended procurement, invite tenders from the maximum number of domestic suppliers and suppliers of other Parties, consistent with the efficient operation of the procurement system. They shall select the suppliers to participate in the procedure in a fair and non-discriminatory manner.

2. Entities maintaining permanent lists of qualified suppliers may select suppliers to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the lists.

3. Suppliers requesting to participate in a particular intended procurement shall be permitted to submit a tender and be considered, provided, in the case of those not yet qualified, there is sufficient time to complete the qualification procedure under Articles VIII and IX. The number of additional suppliers permitted to participate shall be limited only by the efficient operation of the procurement system.

4. Requests to participate in selective tendering procedures may be submitted by telex, telegram or facsimile.

Article XI

Time-limits for Tendering and Delivery

General

1. (a) Any prescribed time-limit shall be adequate to allow suppliers of other Parties as well as domestic suppliers to prepare and submit tenders before the closing of the tendering procedures. In determining any such time-limit, entities shall, consistent with their own reasonable needs, take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from foreign as well as domestic points.

(b) Each Party shall ensure that its entities shall take due account of publication delays when setting the final date for receipt of tenders or of applications to be invited to tender.

Deadlines

2. Except in so far as provided in paragraph 3,

(a) in open procedures, the period for the receipt of tenders shall not be less than 40 days from the date of publication referred to in paragraph 1 of Article IX;

(b) in selective procedures not involving the use of a permanent list of qualified suppliers, the period for submitting an application to be invited to tender shall not be less than 25 days from the date of publication referred to in paragraph 1 of Article IX; the period for receipt of tenders shall in no case be less than 40 days from the date of issuance of the invitation to tender;

(c) in selective procedures involving the use of a permanent list of qualified suppliers, the period for receipt of tenders shall not be less than 40 days from the date of the initial issuance of invitations to tender, whether or not the date of initial issuance of invitations to tender coincides with the date of the publication referred to in paragraph 1 of Article IX.

3. The periods referred to in paragraph 2 may be reduced in the circumstances set out below:

(a) if a separate notice has been published 40 days and not more than 12 months in advance and the notice contains at least:

(i) as much of the information referred to in paragraph 6 of Article IX as is available;

(ii) the information referred to in paragraph 8 of Article IX;

(iii) a statement that interested suppliers should express their interest in the procurement to the entity; and

(iv) a contact point with the entity from which further information may be obtained.

the 40-day limit for receipt of tenders may be replaced by a period sufficiently long to enable responsive tendering, which, as a general rule, shall not be less than 24 days, but in any case not less than 10 days;

(b) in the case of the second or subsequent publications dealing with contracts of a recurring nature within the meaning of paragraph 6 of Article IX, the 40-day limit for receipt of tenders may be reduced to not less than 24 days;

(c) where a state of urgency duly substantiated by the entity renders impracticable the periods in question, the periods specified in paragraph 2 may be reduced but shall in no case be less than 10 days from the date of the publication referred to in paragraph 1 of Article IX; or

(d) the period referred to in paragraph 2(c) may, for procurements by entities listed in Annexes 2 and 3, be fixed by mutual agreement between the entity and the selected suppliers. In the absence of agreement, the entity may fix periods which shall be sufficiently long to enable responsive tendering and shall in any case not be less than 10 days.

4. Consistent with the entity's own reasonable needs, any delivery date shall take into account such factors as the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the points of supply or for supply of services.

Article XII

Tender Documentation

1. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be one of the official languages of the WTO.

2. Tender documentation provided to suppliers shall contain all information necessary to permit them to submit responsive tenders, including information required to be published in the notice of intended procurement, except for paragraph 6(g) of Article IX, and the following:

(a) the address of the entity to which tenders should be sent;

(b) the address where requests for supplementary information should be sent;

(c) the language or languages in which tenders and tendering documents must be submitted;

(d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance;

(e) the persons authorized to be present at the opening of tenders and the date, time and place of this opening;

(f) any economic and technical requirement, financial guarantees and information or documents required from suppliers;

(g) a complete description of the products or services required or of any requirements including technical specifications, conformity certification to be fulfilled, necessary plans, drawings and instructional materials;

(h) the criteria for awarding the contract, including any factors other than price that are to be considered in the evaluation of tenders and the cost elements to be included in evaluating tender prices, such as transport, insurance and inspection costs, and in the case of products or services of other Parties, customs duties and other import charges, taxes and currency of payment;

(i) the terms of payment;

(j) any other terms or conditions;

(k) in accordance with Article XVII the terms and conditions, if any, under which tenders from countries not Parties to this Agreement, but which apply the procedures of that Article, will be entertained.

Forwarding of Tender Documentation by the Entities

3. (a) In open procedures, entities shall forward the tender documentation at the request of any supplier participating in the procedure, and shall reply promptly to any reasonable request for explanations relating thereto.

(b) In selective procedures, entities shall forward the tender documentation at the request of any supplier requesting to participate, and shall reply promptly to any reasonable request for explanations relating thereto.

(c) Entities shall reply promptly to any reasonable request for relevant information submitted by a supplier participating in the tendering procedure, on condition that such information does not give that supplier an advantage over its competitors in the procedure for the award of the contract.

Article XIII

Submission, Receipt and Opening of Tenders and Awarding of Contracts

1. The submission, receipt and opening of tenders and awarding of contracts shall be consistent with the following:

(a) tenders shall normally be submitted in writing directly or by mail. If tenders by telex, telegram or facsimile are permitted, the tender made thereby must include all the information necessary for the evaluation of the tender, in particular the definitive price proposed by the tenderer and a statement that the tenderer agrees to all the terms, conditions and provisions of the invitation to tender. The tender must be confirmed promptly by letter or by the despatch of a signed copy of the telex, telegram or facsimile. Tenders presented by telephone shall not be permitted. The content of the telex, telegram or facsimile shall prevail where there is a difference or conflict between that content and any documentation received after the time-limit; and

(b) the opportunities that may be given to tenderers to correct unintentional errors of form between the opening of tenders and the awarding of the contract shall not be permitted to give rise to any discriminatory practice.

Receipt of Tenders

2. A supplier shall not be penalized if a tender is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of the entity. Tenders may also be considered in other exceptional circumstances if the procedures of the entity concerned so provide.

Opening of Tenders

3. All tenders solicited under open or selective procedures by entities shall be received and opened under procedures and conditions guaranteeing the regularity of the openings. The receipt and opening of tenders shall also be consistent with the national treatment and non-discrimination provisions of this Agreement. Information on the opening of tenders shall remain with the entity concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

Award of Contracts

4. (a) To be considered for award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation and be from a supplier which complies with the conditions for participation. If an entity has received a tender abnormally lower than other tenders submitted, it may enquire with the tenderer to ensure that it can comply with the conditions of participation and be capable of fulfilling the terms of the contract.

(b) Unless in the public interest an entity decides not to issue the contract, the entity shall make the award to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of other Parties, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in the notices or tender documentation is determined to be the most advantageous.

(c) Awards shall be made in accordance with the criteria and essential requirements specified in the tender documentation.

Option Clauses

5. Option clauses shall not be used in a manner which circumvents the provisions of the Agreement.

Article XIV

Negotiation

1. A Party may provide for entities to conduct negotiations:

(a) in the context of procurements in which they have indicated such intent, namely in the notice referred to in paragraph 2 of Article IX (the invitation to suppliers to participate in the procedure for the proposed procurement); or

(b) when it appears from evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set forth in the notices or tender documentation.

2. Negotiations shall primarily be used to identify the strengths and weaknesses in tenders.

3. Entities shall treat tenders in confidence. In particular, they shall not provide information intended to assist particular participants to bring their tenders up to the level of other participants.

4. Entities shall not, in the course of negotiations, discriminate between different suppliers. In particular, they shall ensure that:

(a) any elimination of participants is carried out in accordance with the criteria set forth in the notices and tender documentation;

(b) all modifications to the criteria and to the technical requirements are transmitted in writing to all remaining participants in the negotiations;

(c) all remaining participants are afforded an opportunity to submit new or amended submissions on the basis of the revised requirements; and

(d) when negotiations are concluded, all participants remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.

Article XV

Limited Tendering

1. The provisions of Articles VII through XIV governing open and selective tendering procedures need not apply in the following conditions, provided that limited tendering is not used with a view to avoiding maximum possible competition or in a manner which would constitute a means of discrimination among suppliers of other Parties or protection to domestic producers or suppliers:

(a) in the absence of tenders in response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements

in the tender, or from suppliers who do not comply with the conditions for participation provided for in accordance with this Agreement, on condition, however, that the requirements of the initial tender are not substantially modified in the contract as awarded;

(b) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;

(c) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the entity, the products or services could not be obtained in time by means of open or selective tendering procedures;

(d) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the entity to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services[5];

(e) when an entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. When such contracts have been fulfilled, subsequent procurements of products or services shall be subject to Articles VII through XIV[6];

(f) when additional construction services which were not included in the initial contract but which were within the objectives of the original tender documentation have, through unforeseeable circumstances, become necessary to complete the construction services described therein, and the entity needs to award contracts for the additional construction services to the contractor carrying out the construction services concerned since the separation of the additional construction services from the initial contract would be difficult for technical or economic reasons and cause significant inconvenience to the entity. However, the total value of contracts awarded for the additional construction services may not exceed 50 per cent of the amount of the main contract;

(g) for new construction services consisting of the repetition of similar construction services which conform to a basic project for which an initial contract was awarded in accordance with Articles VII through XIV and for which the entity has indicated in the notice of intended procurement concerning the initial construction service, that limited tendering procedures might be used in awarding contracts for such new construction services;

(h) for products purchased on a commodity market;

(i) for purchases made under exceptionally advantageous conditions which only arise in the very short term. This provision is intended to cover unusual disposals by firms

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[5]It is the understanding that "existing equipment" includes software to the extent that the initial procurement of the software was covered by the Agreement.

[6]Original development of a first product or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the product or service is suitable for production or supply in quantity to acceptable quality standards. It does not extend to quantity production or supply to establish commercial viability or to recover research and development costs.

which are not normally suppliers, or disposal of assets of businesses in liquidation or receivership. It is not intended to cover routine purchases from regular suppliers;

(j) in the case of contracts awarded to the winner of a design contest provided that the contest has been organized in a manner which is consistent with the principles of this Agreement, notably as regards the publication, in the sense of Article IX, of an invitation to suitably qualified suppliers, to participate in such a contest which shall be judged by an independent jury with a view to design contracts being awarded to the winners.

2. Entities shall prepare a report in writing on each contract awarded under the provisions of paragraph 1. Each report shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin, and a statement of the conditions in this Article which prevailed. This report shall remain with the entities concerned at the disposal of the government authorities responsible for the entity in order that it may be used if required under the procedures of Articles XVIII, XIX, XX and XXII.

Article XVI

Offsets

1. Entities shall not, in the qualification and selection of suppliers, products or services, or in the evaluation of tenders and award of contracts, impose, seek or consider offsets.[7]

2. Nevertheless, having regard to general policy considerations, including those relating to development, a developing country may at the time of accession negotiate conditions for the use of offsets, such as requirements for the incorporation of domestic content. Such requirements shall be used only for qualification to participate in the procurement process and not as criteria for awarding contracts. Conditions shall be objective, clearly defined and non-discriminatory. They shall be set forth in the country's Appendix I and may include precise limitations on the imposition of offsets in any contract subject to this Agreement. The existence of such conditions shall be notified to the Committee and included in the notice of intended procurement and other documentation.

Article XVII

Transparency

1. Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless:

(a) specify their contracts in accordance with Article VI (technical specifications);

(b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement;

[7]Offsets in government procurement are measures used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade or similar requirements.

(c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress.

2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers.

Article XVIII

Information and Review as Regards Obligations of Entities

1. Entities shall publish a notice in the appropriate publication listed in Appendix II not later than 72 days after the award of each contract under Articles XIII through XV. These notices shall contain:

(a) the nature and quantity of products or services in the contract award;

(b) the name and address of the entity awarding the contract;

(c) the date of award;

(d) the name and address of winning tenderer;

(e) the value of the winning award or the highest and lowest offer taken into account in the award of the contract;

(f) where appropriate, means of identifying the notice issued under paragraph 1 of Article IX or justification according to Article XV for the use of such procedure; and

(g) the type of procedure used.

2. Each entity shall, on request from a supplier of a Party, promptly provide:

(a) an explanation of its procurement practices and procedures;

(b) pertinent information concerning the reasons why the supplier's application to qualify was rejected, why its existing qualification was brought to an end and why it was not selected; and

(c) to an unsuccessful tenderer, pertinent information concerning the reasons why its tender was not selected and on the characteristics and relative advantages of the tender selected as well as the name of the winning tenderer.

3. Entities shall promptly inform participating suppliers of decisions on contract awards and, upon request, in writing.

4. However, entities may decide that certain information on the contract award, contained in paragraphs 1 and 2(c), be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers.

Article XIX

Information and Review as Regards Obligations of Parties

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Agreement, in the appropriate publications listed in Appendix IV and in such a manner as to enable other Parties and suppliers to become acquainted with them. Each Party shall be prepared, upon request, to explain to any other Party its government procurement procedures.

2. The government of an unsuccessful tenderer which is a Party to this Agreement may seek, without prejudice to the provisions under Article XXII, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the procuring government shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the government of the unsuccessful tenderer provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall not be disclosed except after consultation with and agreement of the Party which gave the information to the government of the unsuccessful tenderer.

3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to any other Party.

4. Confidential information provided to any Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the party providing the information.

5. Each Party shall collect and provide to the Committee on an annual basis statistics on its procurements covered by this Agreement. Such reports shall contain the following information with respect to contracts awarded by all procurement entities covered under this Agreement:

(a) for entities in Annex 1, statistics on the estimated value of contracts awarded, both above and below the threshold value, on a global basis and broken down by entities; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value on a global basis and broken down by categories of entities;

(b) for entities in Annex 1, statistics on the number and total value of contracts awarded above the threshold value, broken down by entities and categories of products and services according to uniform classification systems; for entities in Annexes 2 and 3, statistics on the estimated value of contracts awarded above the threshold value broken down by categories of entities and categories of products and services;

(c) for entities in Annex 1, statistics, broken down by entity and by categories of products and services, on the number and total value of contracts awarded under each of the cases of Article XV; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded above the threshold value under each of the cases of Article XV; and

(d) for entities in Annex 1, statistics, broken down by entities, on the number and total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes; for categories of entities in Annexes 2 and 3, statistics on the total value of contracts awarded under derogations to the Agreement contained in the relevant Annexes.

To the extent that such information is available, each Party shall provide statistics on the country of origin of products and services purchased by its entities. With a view to ensuring that such statistics are comparable, the Committee shall provide guidance on methods to be used. With a view to ensuring effective monitoring of procurement covered by this Agreement, the Committee may decide unanimously to modify the requirements of subparagraphs (a) through (d) as regards the nature and the extent of statistical information to be provided and the breakdowns and classifications to be used.

Article XX

Challenge Procedures

Consultations

1. In the event of a complaint by a supplier that there has been a breach of this Agreement in the context of a procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.

Challenge

2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of the Agreement arising in the context of procurements in which they have, or have had, an interest.

3. Each Party shall provide its challenge procedures in writing and make them generally available.

4. Each Party shall ensure that documentation relating to all aspects of the process concerning procurements covered by this Agreement shall be retained for three years.

5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.

6. Challenges shall be heard by a court or by an impartial and independent review body with no interest in the outcome of the procurement and the members of which are secure from external influence during the term of appointment. A review body which is not a court shall either be subject to judicial review or shall have procedures which provide that:

(a) participants can be heard before an opinion is given or a decision is reached;

(b) participants can be represented and accompanied;

(c) participants shall have access to all proceedings;

(d) proceedings can take place in public;

(e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;

(f) witnesses can be presented;

(g) documents are disclosed to the review body.

7. Challenge procedures shall provide for:

(a) rapid interim measures to correct breaches of the Agreement and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;

(b) an assessment and a possibility for a decision on the justification of the challenge;

(c) correction of the breach of the Agreement or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

8. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

Article XXI

Institutions

1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and Vice-Chairman and shall meet as necessary but not less than once a year for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish working parties or other subsidiary bodies which shall carry out such functions as may be given to them by the Committee.

Article XXII

Consultations and Dispute Settlement

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.

2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this

Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.

4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:

> "To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.

7. Notwithstanding paragraph 2 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in the said Appendix 1.

Article XXIII

Exceptions to the Agreement

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

Article XXIV

Final Provisions

1. *Acceptance and Entry into Force*

This Agreement shall enter into force on 1 January 1996 for those governments[8] whose agreed coverage is contained in Annexes 1 through 5 of Appendix I of this Agreement and which have, by signature, accepted the Agreement on 15 April 1994 or have, by that date, signed the Agreement subject to ratification and subsequently ratified the Agreement before 1 January 1996.

2. *Accession*

Any government which is a Member of the WTO, or prior to the date of entry into force of the WTO Agreement which is a contracting party to GATT 1947, and which is not a Party to this Agreement may accede to this Agreement on terms to be agreed between that government and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession which states the terms so agreed. The Agreement shall enter into force for an acceding government on the 30th day following the date of its accession to the Agreement.

3. *Transitional Arrangements*

(a) Hong Kong and Korea may delay application of the provisions of this Agreement, except Articles XXI and XXII, to a date not later than 1 January 1997. The commencement date of their application of the provisions, if prior to 1 January 1997, shall be notified to the Director-General of the WTO 30 days in advance.

(b) During the period between the date of entry into force of this Agreement and the date of its application by Hong Kong, the rights and obligations between Hong Kong and all other Parties to this Agreement which were on 15 April 1994 Parties to the Agreement on Government Procurement done at Geneva on 12 April 1979 as amended on 2 February 1987 (the "1988 Agreement") shall be governed by the substantive[9] provisions of the 1988 Agreement, including its Annexes as modified or rectified, which provisions are incorporated herein by reference for that purpose and shall remain in force until 31 December 1996.

(c) Between Parties to this Agreement which are also Parties to the 1988 Agreement, the rights and obligations of this Agreement shall supersede those under the 1988 Agreement.

(d) Article XXII shall not enter into force until the date of entry into force of the WTO Agreement. Until such time, the provisions of Article VII of the 1988 Agreement shall apply to consultations and dispute settlement under this Agreement, which provisions are hereby incorporated in the Agreement by reference for that purpose. These provisions shall be applied under the auspices of the Committee under this Agreement.

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[8]For the purpose of this Agreement, the term "government" is deemed to include the competent authorities of the European Communities.

[9]All provisions of the 1988 Agreement except the Preamble, Article VII and Article IX other than paragraphs 5(a) and (b) and paragraph 10.

(e) Prior to the date of entry into force of the WTO Agreement, references to WTO bodies shall be construed as referring to the corresponding GATT body and references to the Director-General of the WTO and to the WTO Secretariat shall be construed as references to, respectively, the Director-General to the CONTRACTING PARTIES to GATT 1947 and to the GATT Secretariat.

4. *Reservations*

Reservations may not be entered in respect of any of the provisions of this Agreement.

5. *National Legislation*

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures and practices applied by the entities contained in its lists annexed hereto, with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

6. *Rectifications or Modifications*

(a) Rectifications, transfers of an entity from one Annex to another or, in exceptional cases, other modifications relating to Appendices I through IV shall be notified to the Committee, along with information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement. If the rectifications, transfers or other modifications are of a purely formal or minor nature, they shall become effective provided there is no objection within 30 days. In other cases, the Chairman of the Committee shall promptly convene a meeting of the Committee. The Committee shall consider the proposal and any claim for compensatory adjustments, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement prior to such notification. In the event of agreement not being reached, the matter may be pursued in accordance with the provisions contained in Article XXII.

(b) Where a Party wishes, in exercise of its rights, to withdraw an entity from Appendix I on the grounds that government control or influence over it has been effectively eliminated, that Party shall notify the Committee. Such modification shall become effective the day after the end of the following meeting of the Committee, provided that the meeting is no sooner than 30 days from the date of notification and no objection has been made. In the event of an objection, the matter may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII In considering the proposed modification to Appendix I and any consequential compensatory adjustment, allowance shall be made for the market-opening effects of the removal of government control or influence.

7. *Reviews, Negotiations and Future Work*

(a) The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall annually inform the General Council of the WTO of developments during the periods covered by such reviews.

(b) Not later than the end of the third year from the date of entry into force of this Agreement and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving this Agreement and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, having regard to the provisions of Article V relating to developing countries.

(c) Parties shall seek to avoid introducing or prolonging discriminatory measures and practices which distort open procurement and shall, in the context of negotiations under subparagraph (b), seek to eliminate those which remain on the date of entry into force of this Agreement.

8. *Information Technology*

With a view to ensuring that the Agreement does not constitute an unnecessary obstacle to technical progress, Parties shall consult regularly in the Committee regarding developments in the use of information technology in government procurement and shall, if necessary, negotiate modifications to the Agreement. These consultations shall in particular aim to ensure that the use of information technology promotes the aims of open, non-discriminatory and efficient government procurement through transparent procedures, that contracts covered under the Agreement are clearly identified and that all available information relating to a particular contract can be identified. When a Party intends to innovate, it shall endeavour to take into account the views expressed by other Parties regarding any potential problems.

9. *Amendments*

Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall not enter into force for any Party until it has been accepted by such Party.

10. *Withdrawal*

(a) Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date on which written notice of withdrawal is received by the Director-General of the WTO. Any Party may upon such notification request an immediate meeting of the Committee.

(b) If a Party to this Agreement does not become a Member of the WTO within one year of the date of entry into force of the WTO Agreement or ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date.

11. *Non-application of this Agreement between Particular Parties*

This Agreement shall not apply as between any two Parties if either of the Parties, at the time either accepts or accedes to this Agreement, does not consent to such application.

12. *Notes, Appendices and Annexes*

The Notes, Appendices and Annexes to this Agreement constitute an integral part thereof.

13. *Secretariat*

This Agreement shall be serviced by the WTO Secretariat.

14. *Deposit*

This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to paragraph 6 and of each amendment thereto pursuant to paragraph 9, and a notification of each acceptance thereof or accession thereto pursuant to paragraphs 1 and 2 and of each withdrawal therefrom pursuant to paragraph 10 of this Article.

15. *Registration*

This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four in a single copy, in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.

NOTES

The terms "country" or "countries" as used in this Agreement, including the Appendices, are to be understood to include any separate customs territory Party to this Agreement.

In the case of a separate customs territory Party to this Agreement, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

Article 1, paragraph 1

Having regard to general policy considerations relating to tied aid, including the objective of developing countries with respect to the untying of such aid, this Agreement does not apply to procurement made in furtherance of tied aid to developing countries so long as it is practised by Parties.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
Washington, D.C.

April 30, 1994

Annual Report on Discrimination in Foreign Government Procurement
and
General Report on Actions Taken Under Title VII

I. Statutory Provisions

Title VII of the 1988 Omnibus Trade and Competitiveness Act amends the Trade Agreements Act of 1979 which includes a requirement that the Administration submit to Congress a report on the extent to which foreign countries discriminate against U.S. products or services in government procurement. These functions have been delegated to the U.S. Trade Representative (USTR) by Executive Order. The report is to be submitted annually by April 30, and is to cover those countries that are discriminating as defined by the statute. Specifically, the USTR is to identify:

- countries that are signatories to the GATT Government Procurement Code (Code) and are not in compliance with the Code;

- countries that are signatories to the Code, and are in compliance with the Code, but maintain a significant and persistent pattern or practice of discrimination against U.S. products or services in procurements not covered by the Code, resulting in identifiable harm to U.S. businesses, and whose products or services are acquired in significant amounts by the U.S. Government; and

- countries, not signatories to the Code, that maintain a significant and persistent pattern or practice of discrimination against U.S. products or services, resulting in identifiable harm to U.S. businesses, and whose products or services are acquired in significant amounts by the U S. Government.

Title VII provides for consultations with countries identified in the report as discriminating and for appropriate Presidential action with regard to such countries if discrimination is not addressed within specified time frames.

Title VII also requires that the Administration submit to Congress, by April 30, 1994, a general report evaluating the adequacy and effectiveness of identifications made under this statute.

II. Results of 1994 Title VII Review

The United States has serious concerns with procurement practices in the medical technology and telecommunications sectors in **Japan.** USTR has decided not to identify Japan at this time under Title VII. A decision will be made by June 30 whether to take action under Title VII.

The European Union (EU) remains identified for discrimination in the telecommunications sector. The sanctions that were imposed on May 28, 1993, will remain in effect.

USTR is also providing information on the following procurement markets and practices of particular concern and which the Administration will follow closely in the coming year:

- **Australia**, for discrimination in non-Code-covered procurement. The Australian Government maintains several discriminatory procurement practices in the information technology sector.

- **Brazil**, for discrimination in non-Code-covered procurement. Brazil recently enacted discriminatory procurement practices in the computer, software, telecommunications and digital electronics sectors.

- **China**, for discrimination in non-Code-covered procurement. China's government procurement practices remain, for the most part, secretive and inaccessible to foreign suppliers. However, China has made good progress over the last year in increasing the transparency of its procurement regime.

- **Japan**, for discrimination in non-Code-covered procurement. The United States has continuing concerns with procurement practices in the supercomputer and computer sectors.

III. GATT Government Procurement Code

On April 15 of this year, the United States signed the new Agreement on Government Procurement, which substantially increases the scope and value of coverage compared to the existing Code, as well as improves its procedural disciplines, particularly through

new provisions on bid challenge. The new Code[1] will enter into force on January 1, 1996, and will cover procurement of goods and services, including construction, by:

(1) central government entities;

(2) subcentral government entities; and

(3) government-owned utilities and other quasi-governmental entities.

As a result of the expansion in coverage, the total value of bidding opportunities under the Code is likely to expand by several hundred billion dollars a year.

The United States and the EU completed a bilateral procurement agreement under the Code on April 13 in Marrakesh, Morocco, worth approximately $200 billion a year. U.S.-EU coverage will include substantial procurement in all three categories of entities described above. With respect to utilities, the United States and EU reached final agreement on the electrical power generation sector and ports sector. Once the EU's Council of Ministers formally approves the agreement, both parties will submit amended schedules to the Interim Code Committee.

The United States will automatically extend coverage similar to that in the U.S.-EU agreement to Korea and Israel, since the United States had reached agreement with these two countries in all categories of entities on December 15, 1993, in Geneva. With respect to all other parties, the United States is ready to expand coverage at any time during the implementation period on the basis of reciprocity. At the time of this report, it appears that rapid expansion is most likely with the EFTA countries (Sweden, Norway, Finland, Austria and Switzerland).

A high priority for the United States during the implementation period will be increasing participation in the Code. While the United States will continue to encourage new countries to accede to the Code, it also recognizes that many will not be prepared to assume all Code obligations immediately. For this reason, the United States expects to explore with the other parties and the GATT secretariat mechanisms by which countries could adopt more transparent procurement systems as a first step towards full accession to the Code.

[1]Signatories to the new Code are: the European Union, Japan, Korea, Canada, Sweden, Finland, Norway, Switzerland, Austria, Israel and the United States.

IV. Background

A. *Markets Subject to Early Review*

Japan

Telecommunications

In the telecommunications sector, foreign suppliers are impeded from competing fairly for Japanese government procurement contracts due to a number of factors, including: (1) limited access to early information on upcoming procurements; (2) development of technical specifications which favor domestic suppliers; (3) a system of evaluating bids which focuses exclusively on lowest price offered without considering adequately the technical merits of the tender; (4) lack of transparency and competitive bidding procedures for subcontracts; and (5) excessive use of single tendering.

Given the global competitiveness of the U.S. telecommunications industry and the relatively low U.S. and foreign market share in Japan as compared to other developed economies, this sector was identified in the July 1993 Framework Agreement between the United States and Japan as a priority sector for agreement. Despite the deadline for concluding an agreement in this sector by the February 11 meeting between the President and the former Prime Minster, an agreement was not reached. This was due to lack of agreement on quantitative and qualitative criteria to assess implementation of the agreement, as called for in the Framework Agreement. It was also due to outstanding procedural issues of critical concern to the United States to address the problems described above, as well as to the lack of agreement on entity coverage of the agreement. With regard to the latter point, the major sticking point concerned coverage of NTT, the largest Japanese telecommunications equipment supplier, which is two-thirds government-owned.

Medical Technology

Although U.S. manufacturers of medical technology lead the world in exports and innovation, the ability of U.S. firms to obtain market access to Japan's public sector market comparable to that of other developed country markets has been limited. Reasons for this relative lack of success in Japan include an opaque procurement process and a reliance on an informal network of domestic suppliers that leads to pre-determined and noncompetitive procurements, virtually excluding foreign competition before tender offers are made public.

The United States is also concerned with Japan's reluctance to issue a high-level political directive instructing Japanese procurement officials to meet with foreign representatives in order to increase the field of potential suppliers. Because it is precisely the noncompetitive practices at this level that often exclude foreign firms from even bidding on contracts, the U.S. Government views this direction as being of great

importance. Finally, we are concerned with Japan's reluctance to cover in-vitro diagnostic reagents under a government procurement agreement, which are considered medical devices in the United States and EU and are the largest medical device export from the United States to Japan.

Most procurements in the medical technology sector fall below the SDR 100,000 level and thus are covered neither by the GATT Government Procurement Code nor by the specific procurement procedures adopted in the March 29 Action Plan.

As in the case of telecommunications, medical technology was also identified in the Framework agreement as priority sector. An agreement has not been reached on medical technology.

Recent Developments

On March 29, the Government of Japan issued an Action Plan on Government Procurement which contained detailed sections on telecommunications and medical technology. While some modest movement was made to address U.S. concerns, the Action Plan did not provide a basis for resuming Framework sectoral negotiations.

On April 15, U.S. Trade Representative Michael Kantor met with the former Foreign Minister and current Prime Minister Hata to discuss among other issues, the possibilities of resuming the Framework sectoral negotiations, including the negotiations on the government procurement of telecommunications and medical technology goods and services. Ambassador Kantor raised several points that needed to be addressed by Japan before the United States was prepared to informally enter into discussions on resuming the Framework discussions. Prime Minister Hata said he would provide an official response to the points at a later date. The U.S. Government is still awaiting this official response.

B. *Newly Identified Countries*

None

C. *Continuation of Previous Identification*

European Union

In the February 1992 "Early Review" under the Title VII statute, the USTR determined that the European Union (EU) satisfied the requirements for identification under the statute as a country that discriminates against U.S. products or services in non-Code-covered procurement. The EU was identified for the discriminatory procurement policies of government-owned telecommunications and electrical utilities in certain EU member states. The EU's "Utilities Directive" was specifically cited.

On May 25, 1993, the United States and the EU reached an agreement that satisfied U.S. concerns in the heavy electrical sector. The agreement provided, among other things, that the EU waive the application of the discriminatory provision of the Utilities Directive to EU electrical utilities for U.S. products. The United States removed the "Buy American" preferences on the Tennessee Valley Authority and the five Federal power administrations of the Department of Energy. In addition, both sides agreed to extend GATT Government Procurement Code treatment to central government procurement of services and construction and procurement of previously uncovered central government entities.

On April 13, 1994, the United States and EU reached a final agreement on bilateral coverage under the new GATT Government Procurement Code. This agreement expands on prior coverage by including substantial coverage of subcentral procurement and procurement by government-owned electrical utilities and ports. The agreement, however, does not include telecommunications. As a result, the identification of the EU for discrimination by government-owned telecommunications utilities will continue, as will the associated sanctions.

The sanctions, which were imposed on May 28, 1993, encompass the full range of potential sanctions on civilian procurements provided for under Title VII, consistent with U.S. obligations under the Code and the MOU. Mainly for national security reasons, the sanctions did not include procurements by the Department of Defense. The sanctions prohibit awards to EU suppliers of goods and services for the following contracts:

(1) all contracts for the purchase of services by Federally-owned power utilities;

(2) all contracts for the purchase of services excluded from the MOU by Federal agencies (e.g., R&D); and

(3) all contracts for the purchase of goods, services and construction below the thresholds specified in the Code and the MOU.

The sanctions were not applied to Greece, Spain and Portugal because these member states do not currently implement the EU Utilities Directive, which requires discriminatory procurement, and made official assurances that they do not discriminate against U.S. telecommunications equipment. Additionally, the sanctions were lifted with respect to Germany on March 15 of this year, after German officials informed the U.S. Government that due to the Germany-U.S. Treaty of Friendship, Commerce and Navigation of 1954, the Utilities Directive does not require Germany to discriminate against U.S. equipment.

D. *Markets of Concern*

1. Australia

Australia maintains several measures that favor Australian companies in bidding for government contracts. As noted in last year's report, the Australian government maintains a restricted membership, preselected "Restricted Systems Integration Panel," for all federal procurements of information systems technology. Bidding for such contracts is limited to panel members. Criteria for membership on the panel include demonstrated competence, commercial viability, and a potential to contribute to Australian government policy objectives, including export from Australia into Asian-Pacific markets and, in most cases, local development.

Despite the elimination of formal offset requirements, an offset-like program continues in the information technology and telecommunications sectors. Since 1991, foreign information technology companies have been required to enter into either fixed term arrangements (FTAs) or "Partnerships for Development" (PFDs), which generally commit a company to undertake local industry development activities, or impose local-content requirements.

2. Brazil

Brazil recently enacted several directives and regulations which establish discriminatory practices in public procurements of telecommunications goods and services, computers, computer software and some digital electronics items. For example, Decree 1070 of March 2, 1994, requires all federal agencies and parastatal entities to adopt "price and technology" criteria for the award of contracts in these sectors. Under a complicated system of preferences, bidders that are Brazilian owned, use local technology or locally produced products, or use products with a minimum local value-added content are to be given preferential treatment allowing a 12 percent price difference over other bidders.

3. China

With few exceptions, China's government procurement practices are not consistent with open and competitive bidding. For the most part, China's procurement practices remain non-transparent and inaccessible to foreign suppliers. Purchases for virtually all projects in China are subject to at least one, and usually several, approvals from governments at various levels.

While tenders for projects that use funds supplied by international organizations are usually openly announced, most government procurement is by invitation only. Competition is by direct negotiation rather than by competitive bid. Goods and vendors for large projects that are covered in the annual state plan are frequently designated during the planning process. All information, from solicitation to award, remains secret

and is known only to those companies involved or to officials in the planning and industrial ministries.

China has committed to improve this situation. In October 1992, the United States and China signed a Memorandum of Understanding (MOU) on market access in which China agreed to increase the transparency of its trade system by publishing all of its rules and regulations related to trade and agreed not to enforce any law that is unpublished. As of December 1993, China published a large number of trade related laws and regulations and issued State Council Circular 63 stating that only published laws and regulations are enforceable. In addition, the Chinese published government procurement guidelines regarding machinery and electronics. These guidelines, however, contain registration requirements and unacceptably vague tendering regulations. The Administration is discussing improvements in the tendering regulations with the Chinese government that would bring the regulations up to the standards of the GATT Government Procurement Code.

4. Japan

Supercomputers

The U.S. Government initiated a Super 301 investigation into the supercomputer procurement practices of the Government of Japan in 1989 which resulted in the 1990 U.S. - Japan Supercomputer Agreement. Positive results under the Agreement, however, have been slow in coming. U.S. machines won only three out of 11 awards made during the first three years of the agreement, all in politically directed, uncontested bids. Further, we identified numerous serious problems in Japan's implementation of the Agreement which led USTR to announce, on April 30, 1993, a special review of Japan's compliance with the Agreement under section 306 of the 1974 Trade Act.

Subsequent to the initiation of the review, the Japanese Government procured 15 supercomputers under the regular and supplemental budgets of the 1993 Japan Fiscal Year. Five U.S. supercomputer vendors were awarded six of these contracts. The section 306 review focused heavily on these 15 procurements. While acknowledging that the six U.S. awards represented a positive development in this important sector, the review highlighted several areas of serious concern which demonstrate the need for continued scrutiny of procurements under the Agreement , in order to sustain and build upon this limited progress and achieve a genuinely "fair, open and non-discriminatory" Japanese procurement regime.

U.S. supercomputer vendors dominate the markets outside of Japan, and have a significantly greater share of the Japanese private sector market than of the public sector market. In Europe, U.S. vendors hold an 85 percent share of the public sector market. Despite the demonstrated competitiveness of U.S. machines in all other markets, U.S. supercomputers have never won a head-to-head procurement in the

Japanese public market against the same Japanese vector machines they regularly best elsewhere.

This continued lack of head-to-head wins by U.S. vendors in the Japanese public sector is a serious concern that in itself raises questions about Japanese compliance with the Agreement. In addition to this concern, the 306 review surfaced four other areas of ongoing major concern: 1) the notable failure of the Japanese Government to test or evaluate fully systems software, which is essential to the actual performance of a supercomputer and which is well known area of strength among U.S. vendors; 2) Japan's compliance with the Agreement's provisions on pricing, including the protections against unfairly low bids and the use of market research to establish a reference point for bid prices; 3) results in the Japanese public sector market which do not have a defensible relation to results in other markets, even with results in the Japanese private sector market and 4) anomalies in the conduct of benchmark testing.

Accordingly, the section 306 review will remain underway for an indefinite period of time while we observe additional procurements and consult with the Japanese Government to definitively address these problem areas.

Computers

Pursuant to a January 22, 1992 exchange of letters between the Governments of the United States and Japan, the Japanese Government agreed to expand procurements of competitive foreign computer products and services based on the principles of non-discriminatory, transparent, fair and open competition. Despite the Agreement's clear goal of expanding Japan's procurements of foreign computer products and services, the data collected under the agreement revealed that limited progress has been made thus far. According to U.S. computer industry data, foreign computer companies' market share of the Japanese public sector, consisting of national, sub-national, and quasi-governmental entities, for computer products (including mainframe, office computers, minicomputers, and workstations, but not personal computers) increased from 6.6 percent in 1991 to only 8.9 percent in 1992. Foreign computer companies' market share of the Japanese private sector market increased from 35.5 percent in 1991 to 36.3 percent in 1992.

During the government-to-government consultations held in December of last year, the United States raised detailed questions regarding the implementation of specific provisions of the agreement. The Government of Japan was unable to answer the questions raised. Thus, on January 4, 1994, USTR sent a follow-up letter, including detailed questions regarding the Measures, to the Foreign Ministry. The U.S. Government has just received Japan's answers to these questions which are being reviewed by the Trade Policy Staff Committee on Japan. The U.S. Government expects to hold follow-up consultations with Japan soon to further review Japan's implementation of the computer agreement.

V. General Report

Section 305(k) of the Trade Agreements Act of 1979, as amended, calls for a general report of actions under Title VII to be submitted to relevant committees of the Congress by April 30, 1994. With this annual report, five reports have been submitted to the Congress on foreign discriminatory procurement practices under Title VII.

In the first report to Congress in 1990, USTR determined that no country met the criteria for identification. In the second report in 1991, USTR identified Norway for its discriminatory procurement of a tollbooth system for the city of Trondheim. Since this procurement involved Code-covered procurement, the United States initiated dispute settlement proceedings under the Code. As a result of the proceedings, the United States obtained a favorable decision from the GATT panel, and Norway subsequently implemented the panel report by undertaking changes to bring its procurement system into compliance with the Code. The United States terminated Norway's Title VII identification in September 1992.

On February 21, 1992, as a result of a special early review called for in the 1991 annual report, USTR identified the European Community (now European Union) for discrimination in procurement of heavy electrical and telecommunications equipment--areas that were not covered by the Code. The United States continued negotiating with the EC on both sectors pursuant to concluding a new GATT Government Procurement Code agreement and delayed the imposition of sanctions to allow time for a negotiated settlement. The third report in April 1992 noted the status of negotiations with the EC. In April 1993, prior to submission of the fourth report to Congress, the United States and EC concluded a bilateral, two-year agreement on the heavy electrical sector. The U.S.-EC Memorandum of Understanding on Government Procurement opened for the first time an EC market that had been closed to U.S. manufacturers for over four decades. It also provided a key impetus for completing negotiations on the GATT Code by the end of 1993. Nevertheless, the United States and EC failed to conclude an agreement on telecommunications procurement. As a result, the United States imposed sanctions against the EC on May 28, 1993. As noted in Section IV of the 1994 annual report, the United States concluded a final Code agreement with the EU on April 13 of this year, including permanent coverage of the heavy electrical sector under the Code and substantial coverage in other areas, such as subcentral and ports procurement. Sanctions under Title VII remain in force, however, because of the lack of an agreement on telecommunications. The sanctions do not apply to Germany, Greece, Spain and Portugal because those countries do not discriminate against the United States in this sector.

Additionally, in the fourth report submitted in April 1993, USTR identified Japan under Title VII for discrimination in construction procurement. The Administration delayed imposition of sanctions against Japan in June 1993 and again in November 1993 as the result of Japan's pledge to undertake a new Action Plan to improve competition and transparency for government construction projects. The Administration reviewed

details developed under the Action Plan in January 1994 and concluded that they would effectively lead to the elimination of discrimination against U.S. companies for these projects. As a result the identification of Japan on construction was terminated.

Finally, USTR has used the annual reports to Congress to focus attention on other problems in government procurement that have not met the statutory criteria for identification. The information passed to Congress on these practices has facilitated work with these countries to alleviate discrimination in government procurement. For example, we provided information on the non-transparent practices of Greece in the 1990 and 1991 annual reports. This information formed the basis for work with Greece that ultimately led to the United States according Greece Code signatory status through the EC's membership in the Code. Overall, the process of registering concerns with respect to various countries has proven effective in establishing a U.S. trade policy agenda on government procurement.

FACT SHEET

Agreement on Government Procurement

On April 15, 1994, the United States initialed the Agreement on Government Procurement (Code). The other signatories are: the member of the European Union (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom), Canada, most EFTA Countries (Austria, Finland, Liechtenstein, Norway, Sweden, Switzerland), Japan, Korea and Israel. Korea is joining the Code for the first time. Hong Kong and Singapore, which are members of the 1979 Agreement on Government Procurement, will not be members of the new Code.

The United States has agreed to cover under the Code procurement by all executive branch agencies, some procurement by subcentral government and procurement by government-owned utilities. The Code will enter into force on January 1, 1996.

I. Application of the Code as between the United States and the European Union

Central Government Procurement (Category A)

United States -- Procurement by all executive branch agencies of: (a) goods and services over a threshold of 130,000 SDRs ($182,000) and (b) construction services over a threshold of 5 million SDRs ($7 million).

Except procurement of goods, services and construction by the Federal Aviation Administration with respect to the European Union.

European Union -- Procurement by the Council of the European Union, by the European Commission, and by all central government authorities of member states of: (a) goods and services over a threshold of 130,000 SDRs ($182,000) and (b) construction services over a threshold of 5 million SDRs ($7 million).

Except procurement of air traffic control equipment.

Sub-central Government Procurement (Category B)

United States -- Procurement by 37 states of goods and services over a threshold of 355,000 SDRs ($500,000) and procurement of construction

services over a threshold of 5 million SDRs ($7 million). Certain procurements are exempted by some states.

States covering all or most executive branch agencies -- Arizona, Arkansas, California, Florida, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New York, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin.

States covering selected executive branch agencies -- Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, Oklahoma, Oregon, South Dakota, Texas, Wyoming.

European Union -- Procurement by all sub-central government entities in member states of goods over a threshold of 200,000 SDRs ($280,000).

Government-controlled Entities (Category C)

United States -- Procurement by the Tennessee Valley Authority, the Power Marketing Administrations of the Department of Energy, and the St. Lawrence Seaway of: (a) goods and services over a threshold of $250,000, and (b) construction services over a threshold of 5 million SDRs ($7 million).

Procurement by the Port Authority of New York and New Jersey, the Port of Baltimore and the New York Power Authority of: (a) goods and services over a threshold of 400,000 SDRs ($560,000), and (b) construction services over a threshold of 5 million SDRs ($7 million).

Procurement by rural power authorities funded by grants and loans from the Rural Electrification Administration relating to power generation projects of (a) goods and services over a threshold of 400,000 SDRs ($560,000), and (b) construction services over a threshold of 5 million SDRs ($7 million), and (c) waiver of Buy America requirements on all other procurement. Effective no later than January 1, 1995.

European Union -- Procurement by entities involved in production, transport or distribution of electricity of (a) goods and services over a threshold of 400,000 SDRs ($560,000) and (b)

construction services over a threshold of 5 million SDRs ($7 million).

Procurement by entities in the field of maritime or inland port or other terminal facilities of (a) goods and services over a threshold of 400,000 SDRs ($560,000) and (b) construction services over a threshold of 5 million SDRs ($7 million).

III. United States coverage with Respect to Other Code Signatories

Central Government (Category A)

The United States will provide the central government Code coverage described above to all signatories.

Except it will exclude procurement of goods, services and construction by the National Space and Aeronautics Administration with respect to Japan.

Sub-central Government (Category B)

Israel and Korea will receive the U.S. Code coverage described under Part I above.

Government-controlled Entities (Category C)

Israel and Korea will receive the U.S. Code coverage described under Part I above.

Guest Observer

By Mickey Kantor

Economists Agree: The Uruguay Round Boosts US Economy

Someone once said that you can lay all the economists in the world end to end and they still wouldn't reach a conclusion

However, there is one issue on which economists are in just about universal agreement Expanded trade is good for the nation's economy The consensus of these economists, along with businesses and consumer groups, is that the Uruguay Round agreement — the broadest, most comprehensive trade agreement in history — will be a major plus for the United States.

Yet in the May 2 issue of Roll Call, Dean Baker and Thea Lee of the Economic Policy Institute questioned Administration and independent studies that indicate that the Uruguay Round agreement could boost US GDP by up to $1 trillion over the ten years of the Round s phase-in

I pleasure to argue with critics of the k over precisely how much it will benefit the US economy

The study Baker and Lee questioned was conducted in 1990 by the Office of the US

The agreement opens foreign markets to an unprecedented degree at a time when our companies and workers have honed their competitive edge.

Trade Representative and the Council of Economic Advisers under the previous Administration and extended by DRI/McGraw-Hill, Inc , in 1993. The study reported gains to the US economy of an estimated $219 billion a year in the tenth year following completion of the Round, or an average annual gain of $110 billion a year in the first ten years. The US economy, in this case, would be roughly 3 percent larger ten years from now than it would be without the Uruguay Round.

DRI/McGraw-Hill concluded that after ten years, the benefit of the Round to the United States will be 1.4 million additional jobs, 1.6 percent higher wages, and 2.2 percent greater productivity than would be attained without the Round

The USTR/CEA analysis is unique in that it calculated dynamic as well as static gains from trade expansion under the Uruguay Round. Static effects are the gains to GDP from more efficient use of the nation's current human and capital resources made possible by lower barriers and expanded trade.

Interestingly, the static gain from the Uruguay Round calculated by the GATT Secretariat staff for North America ($67 billion, of which the US could be expected to account for roughly 90 percent) is in line with the static gains used in 1990 by USTR and CEA ($65 billion).

A dynamic effect is an increase in the nation's growth over time due to freer trade's encouragement of such factors as enhanced investment, particularly in US R&D-oriented industries The calculation of dynamic gains is widely accepted by economists They more accurately reflect real world experience.

Research by many well-respected economists has concluded that dynamic gains from trade liberalization may be two or more times the value of purely static trade gains.

The studies Baker and Lee present have major gaps. They note that Gary Hufbauer and Kim Elliot of the Institute for International Economics estimate annual gains from the UR of about $7 billion. In fact, Hufbauer and Elliot examined only the static gains from unilateral US removal of trade barriers. Thus, they ignored the gains to the US economy from reductions in foreign trade barriers and openings in foreign markets

This is vital to any estimate of economic gains. Foreign barriers are higher than ours, and so a reduction in foreign barriers will boost export growth much more than a reduction in our barriers might possibly threaten our import-competing industries

Still, the numbers generated so far — whether low or high — may all be underestimates None take into account the very real gains that will come from liberalized trade in services, reductions in many nontariff barriers to trade in goods, and the benefits from strengthened trading rules in intellectual property protection and other areas.

In addition, the commonplace lumping of trade into very broad sectors in economic studies results in underestimated gains The economic models do not measure trade gains within sectors, only between sectors. In some studies all US manufacturing trade — over 80 percent of US merchandise trade — is lumped into one sector.

Finally, the strengthened dispute settlement procedures in the World Trade Organization (created by the Uruguay Round agreement), which Baker and Lee fear will affect US environmental laws, will benefit greatly the United States As the world's leading exporter, we need an effective remedy against unfair foreign trade barriers An improved dispute settlement system is precisely what Congress instructed US negotiators to obtain.

We need the Uruguay Round. It plays to our strengths as the world's largest trading country, exporter, and most productive economy. It opens foreign markets to an unprecedented degree at precisely the time when our companies and workers have honed their competitive edge And all the economic research confirms it is the right agreement at the right time for US workers and firms

Ambassador Mickey Kantor is the United States Trade Representative

Mr. CONYERS. Thank you very much, Mr. Ambassador.

There are a lot of questions that we are going to submit to you, but before that, most important to me are the coverage of State procurement markets. Also, what happens to little, small operations like people that process domestic zinc alloy. I want to tell you a little bit about that one.

Further, we were talking about the relationship of jobs and trade, how we create full employment in this country, and its relationship to the whole theory of trade under the Clinton administration.

Finally, of course, the minority preference programs, which are so awfully important.

There are small zinc alloy companies that have just come to my attention principally in New York, Illinois, and Michigan. They are afraid that the low 3 percent tariff on zinc will eventually run them out of business. I am trying to find out whether the Defense Department will continue to be able to buy automotive communications and electronic equipment that contains only domestic alloy.

These alloy manufacturers are suppliers to our defense industry and need to be protected from the impact of import surges. And they must be able to advance our own domestic technology.

So we are looking for some kind of language to be included in the implementing legislation that would give these zinc alloy companies, which are not very large, some kind of protection. This has come to my attention, and I want to bring it up to directly to you.

Mr. KANTOR. First of all, we are as concerned as you are, Mr. Chairman, about this situation. I know John Schmidt, our chief Uruguay Round negotiator, sent you a letter just a couple of weeks ago. I don't remember the date but I think it might have been May 3, if I am not mistaken. He indicated, of course, we had no choice but to maintain the 3 percent reduction, from 19 percent to 3 percent in tariffs.

We are aware of a provision in the statement of administrative action in the Canadian FTA permitting the administration to monitor the zinc alloy imports in connection with protecting the national security, and we will, of course, adhere to that position. We are exploring the possibility of expanding this to cover imports of zinc alloy from all countries.

I cannot commit today the administration to that, but I will tell you the idea is getting serious consideration and we would like to work with you in that matter. We understand the concern. We share it. We would like to look at language that you or other members of the committee or your staff might have. And I will commit that we will work closely with you in order to address this problem.

Mr. CONYERS. Thank you very much. I know it is small in the nature of things, but sometimes it is in these kinds of details that we get the kind of rank and file support for the larger global activities that are more common to your work as Ambassador of Trade.

Mr. KANTOR. I have found in the trade area, Mr. Chairman, there are no small issues.

Mr. CONYERS. Now, just put something into the record in this hearing about the nature of full employment, and the nature of our attempt to use trade to stimulate our own economy. You may be able to counteract what can be perceived immediately as a threat,

namely that as we globalize, we may be harmonizing downward to lower wages. We really want to keep our standards, and if possible, help raise other workers in another countries to higher wages, and collective bargaining activities.

It seems to me that therein lies the health of our Nation economically, and then the health of world trade generally if we could keep focused on the relationships between this increased trade emphasis and the creation of meaningful employment in the United States.

Mr. KANTOR. There is no more serious and important question that we face. Let me attempt to answer that question. Obviously I am not going to be able to fully answer it. I am not sure there is anyone who can.

The President is much more articulate about this and, as you know, has been talking about this since November 1991 at the speech he made at Georgetown University and has talked about it a number of times since then. And he talked about it in the NAFTA debate.

The globalization of our economy is going to continue, whether some like it or not. A number of us like me are getting older and it is a new world out there and we are having to learn what it is about. And it is increasing every day in its globalization.

Money goes around the globe at a dizzying pace. Information goes even faster, our companies are becoming globalized. Even small companies. I was in Georgia where I visited Atlanta Saw, where they are exporting to 70 countries but they only have a low number of employees. So globalization is inevitable and will grow and become interdependent with other countries.

There are three things. One is to make sure that our own economic house is in order; that we show budget discipline, and we hold down long-term interest rates. We pass health care reform in order to remain competitive. We also provide welfare reform, reemployment programs in order to make Americans continually more competitive and productive.

I think the President's and the Congress' ability to pass an earned income tax credit last year frankly and National Service and Goals 2000 this year make an enormous difference. We remain competitive and productive. In this global economy, we have to be able to compete.

No. 2, we have got to open markets and expand trade. And this President, because of his leadership, has had the best year in trade I think of any President I am sure in this century, maybe in American history. He has focused on it and he has focused on it personally.

A lot of what we have done, though, let me say with great respect, is the result of the work of three administrations, not just one administration. In Washington, everybody takes credit for everything they do, thinking nothing ever came before you. That is not correct. The Reagan administration, the Bush administration and now this President have literally followed the same policy of trying to open markets and expand trade. And this procurement agreement with the European Union is just one major example of that.

But third there is a very important aspect, and then I will get to the nub of your question. Trade has to be a two-way street. It cannot be a one-way street. We have to enforce our trade laws and treaties, title VII being one of those. If we don't in a new interdependent world, we are not recognizing reality. It is a tripolar economic world, and the power is being spread to newly industrialized countries that have enormous impact on the world's economy.

We want comparability in trade. And that is what is so important about the Uruguay Round, Mr. Chairman, and members of the committee. For the first time in a multilateral trade agreement, it is called a single undertaking. Every country with some phase-in is undertaking the same responsibilities—all 117 who are members of the GATT today, and then of course those who will accede later. I want to say again it is a single undertaking. That is critical.

The Tokyo Round only involved about 26 countries. The rest of the world by the virtue of MFN could take advantage of the Tokyo Round, but didn't have to adhere to its responsibilities.

We believe that in this new world of interdependency and a global economy we all have responsibilities. The United States is poised, and this President and this Congress, to provide leadership, but we expect our trading partners to come along with us.

Last but certainly not least, as we do that, as we increase our trade—and we were discussing this a little earlier, I think Mr. McCandless and I were talking about this—as we become more and more interdependent and as we increase or global economy, we have to recognize that governmental policies with regard to labor or the environment or competition or bribery—we are the only country in the world with a Foreign Practices Act—have an impact on trade, and therefore have an impact on our workers and our businesses here to build higher wage, high-skill jobs, to create new capital for our companies. And so we will increasingly begin to engage in discussions and move toward some resolution of how we are going to make sure we harmonize up standards around the world.

Increased trade, expanded markets raises standards of living. As long as you have growth, working conditions, wages, freedom of association, rights to collectively bargain, all come along together.

Just one example. I am sorry to go on so long but you raise such a critical question.

Mr. CONYERS. This is the most important issue that I can think of here, so don't apologize for the length of your response.

Mr. KANTOR. If you look at what has happened in Latin America, it is nothing less than stunning, the Caribbean, Central America and South America. There are only two nondemocracies left in that whole region. Market economies are growing. Democracies are becoming more stable.

By the year 2003, we will have more trade with Latin America than we do with Europe. I will say that again. By the year 2003, we will have more trade with Latin America than we do with Europe. It is the second fastest-growing region in the world. It is because wages, salaries, working conditions have all come along with increased productivity, which have all come along with the building of democracies and market economies. They are all dependent upon each other.

So as we take advantage of these markets for U.S. workers and U.S. businesses, 96 percent of all the consumers in the world do not live within our borders, Mr. Chairman. They live outside our borders.

We also are supporting market economies, democracies, growing standards of living, building middle class in Latin America, Asia and around the world. Nothing could be more critical to future stability in this world.

Mr. CONYERS. You just reminded me of the fact that last week I was with Vice President Gore and the First Lady at the official delegation to the inaugural ceremonies of President Mandela in South Africa. Is it too soon to hope that we may be able to engage in the kinds of commercial, agricultural, manufacturing relationships that will be beneficial to both them and us?

I noticed in that delegation was the Secretary of Agriculture, Mike Espy, as well as the Secretary of Commerce, Mr. Ron Brown.

Mr. KANTOR. The answer is, absolutely. On the Thursday after the election, the President announced at 11 a.m., a package of aid as well as trade opportunities for South Africa. It is a 5-year package of some significance. It has major opportunities in trade.

We also, of course, extended our GSP program to be helpful as well, which is part of that whole package.

My trade counselor for trade finance, Howard Reed, has been in South Africa twice, with Secretary Brown once, in trying to build these opportunities. And it is not just in South Africa. That is the linchpin or the base where we try to extend to Africa. We hope to extend the GSP program this year and we will put new emphasis on the African continent.

Mr. CONYERS. We have your letter with reference to minority preference programs. We were concerned that these programs were protected—in the NAFTA—and that they didn't get overridden. Now we are hopeful that in GATT we will be able to continue preserving these programs. I know this is novel to many of the signatories to that trade agreement.

Mr. KANTOR. In the letter that I gave to you this morning, it reiterates what I have said to you before, both personally and publicly, before this committee. In the negotiated code we were careful to preserve our preference programs.

This administration firmly supports a program of set-aside or establish goals for award of contracts to small businesses or businesses owned by socially or economically disadvantaged persons or to historically black colleges or universities. The U.S. schedule to the code clearly exempts these programs from code coverage.

I hope the letter will provide you further assurance of our commitment to preserving these programs, and we would work with you to put appropriate language in the statement of administrative action, which, as you know, we have to pass with the implementing legislation of the Uruguay Round to ensure everyone, both in the Congress and in the public, that this administration is committed to preserving these programs.

Mr. CONYERS. That is good news for a lot of us who have worked many years on getting these programs built up. And I am confident that your continuing concern will signal, as this letter does, that

we are not going to slow down on the kinds of protections that will be needed in these global agreements.

Mr. KANTOR. In fact, the statement of administrative action, I am just reminded the draft right now has the NAFTA-like language in it. The same language that you, Mr. Chairman, and your staff and members of this committee worked with us on during the NAFTA debate last fall.

Mr. CONYERS. Very, very good.

Let me turn to Mr. Al McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

We have a vote on the floor. I wonder if it might be an opportune time to consider recessing and coming back.

Mr. CONYERS. There is not a vote.

Mr. MCCANDLESS. Are they telling the sea stories over there? Past administrations? Good. Well, that is fine. Thank you.

Mr. Ambassador, I want to read a couple things. They are very brief. If you would bear with me, as a format for our moving forward in an area that I consider important, and it is somewhat a revisit of the NAFTA in which there was a lack of understanding, a lack of information, information that was distorted, that I think those who are involved in this need to begin to take a look at, because the letters are beginning to come into the district offices and to Washington that we are giving our sovereignty away.

But I have something here I want to start with. In your presentation on April 14 at the signing, you said, "Increasingly, we will address issues that relate to each other's internal policies, such as competition policy and other domestic regulatory policies as well as environmental protection and labor standards. In a globalized economy, how a nation addresses these issues affects its trading partners." And you touched on that briefly in your comments to the chairman.

Then let me go back to one of the periodicals that I read and kind of play catchup on this whole thing. And this is a quote from the International Trade Reporter of April 20. And it is a response by one person to that statement.

It says, "This administration seems to be saying that the enforcement of environmental and labor standards around the world is the responsibility of U.S. exporters. The threat of use of trade sanctions for reasons unrelated to trade will constantly put the sales and employees of such exportors at risk, even though they pay higher than average wages, both within and outside the United States, and apply much higher environmental and labor standards."

Let's start with that, and if you would care to comment, I would appreciate it.

Mr. KANTOR. I would be happy to comment on that. I think the fears of whoever was quoted in the International Trade Reporter are not—are not reflective of what is going on either in terms of this administration or what is going on in terms of what happened in the Uruguay Round or in NAFTA, frankly.

It is clear that our trading partners in their internal policies have created not only barriers to U.S. trade, but frustrations. And as I said before, global trade becomes more important to us, certainly in California. We know, you and I, Mr. McCandless, how critical global trade is.

Last year in California we exported almost $70 billion. California is the seventh largest nation in the world in gross product and 30 percent of what we do there is tied up in trade, about $100 billion. It has enormous impact on our State, as you know. As we attempt to expand trade—and nothing is more important not only to California but to the country in critical areas—we run up against internal policies that become barriers.

It used to be, of course, in the past that trade negotiations only involved tariffs. We have found now over the past number of years, not only this administration but the Reagan administration and the Bush administration, that internal policies relating to the environment or the misuse of sanitary and phytosanitary standards and in other ways have become a nontariff barrier to trade.

And so you will find in this Uruguay Round agreement a lot more detail relating to those kinds of nontariff barriers than in any other trade agreement in the past. You have to take the intellectual property rights protections to understand, as you do, I know, so well, how we had to address that in a multilateral framework in order to be successful as we look at those problems. Nontariff barriers, there are other factors as well that become intersected with trade. One, of course, is the environment.

The United States, both the Bush administration and now the Clinton administration, led the discussion in the Uruguay Round negotiations to try and develop a trade environment committee of the new World Trade Organization to begin to discuss that issue. No decisions have been made, of course. It becomes part of the ongoing discussion and work program of the World Trade Organization. How we proceed, how we make sure we harmonize up standards, how we make sure people don't use unfair competitive policies in the guise of comparative advantage in trade, is critical to us.

Now, in terms of internationally recognized labor standards and intersection with trade, this started in 1919 with the Treaty of Versailles. In 1947, in the Havana charter, which was the precursor to the GATT in the old international trade organization, there was a direct—not reference, directly intersected trade in internationally recognized labor standards.

For 47 years, starting with the Eisenhower administration in 1953, nearly every U.S. administration, including the Reagan and Bush administrations, have implored the rest of the world to include a discussion of internationally recognized labor standards in the regime of first the GATT and now, of course, it would be when ratified, the World Trade Organization.

We were able, successfully, for the first time in 47 years, to get unanimous consent in an organization that is consensual in nature, meaning the GATT, to have the preparatory committee to the World Trade Organization take up this subject.

Right now it is merely a discussion. We hope it becomes part of the work program. How it proceeds, of course, is a matter of discussion not only here between the Congress and the administration, and then of course assuming in the World Trade Organization, but of course it has to do with our trading partners as well.

But this is not either a policy or a discussion or an involvement that has not had both bipartisan support and is across 47 years and a number of administrations. We intend to continue to press

forward hopefully in a responsible, careful, considered manner, making sure that Republicans and Democrats in this Congress are deeply involved in these considerations as we proceed.

Mr. MCCANDLESS. One of the perceptions here, wrong or right, is that all of a sudden our trade is tied to the way in which our trading partner treats their environment. And to simplify the subject for a response, you people cut down too many mahogany trees that are too big. They could be retained for spotted owls. I am mixing domestic and foreign together.

Mr. KANTOR. We have Oregon and Brazil together, now; right?

Mr. MCCANDLESS. And therefore we are going to have to demonstrate to you that this is wrong as an internal policy of your government and so we are going to do this and that and so on and so forth. And so here you have the private sector that has been trading and all of a sudden they find some obstacles placed because of a perception, or whatever you wish to call it, that the country involved is not treating the environment right.

This is a perception, erroneous or not, that is being taken on the part of the World Trade Organization's structure and some of the objectives of the current administration as it relates to labor, environment, et cetera, tying it to, "trade policies."

Mr. KANTOR. Let me respond to that in this way. No. 1, it is something we are frankly very proud of in this administration. We passed the NAFTA with a bipartisan vote in both bodies. And we think trade ought to proceed on that basis, in a bipartisan, not partisan way.

Trade is not philosophical. It stops at the water's edge. There are no Democrat or Republican jobs in this economy; they are only jobs for Americans. And we will continue to operate in that manner.

No. 2, in the NAFTA, of course, we have a supplemental agreement on the environment, which we think was a proper and considered approach, and that is the countries ought to be at least obligated to enforce their own laws in the area of the environment.

No. 3, we have been very careful in the Uruguay Round to ensure that the United States can maintain its higher standards without fear of retaliation by other countries. That nothing done by the World Trade Organization in this area can affect U.S. laws, either Federal or State or regulations thereunder. That trade and environment committee agenda is broad and open and allows for discussion.

We have not predetermined any outcome to those discussions. We think it is a critical area of involvement. Frankly, as I said before, I want to say it again, I hope—I am trying to be as clear as possible—legitimate comparative advantage is something that we not only live with, but it is important as we build the standard of living around the world. Comparative advantage built upon either exploiting in an unreasonable fashion the environment and not regarding sustainable development or exploiting workers through slave labor or child labor, we don't believe is legitimate comparative advantage.

Now, how we deal with that is another question and we need to work with the Congress as we proceed. But I think that there would be general agreement that we ought to be careful as we ad-

dress these problems on the one hand, but on the other hand, this is the kind of situation that really adversely affects our economy.

Mr. MCCANDLESS. Let me interrupt you at this point if I may to expand on that one point that you just made. How we handle these substandard labor conditions, the ones you used as an example, child and slave, in this discussion now for purposes of amplification, in the World Trade Organization is in place. It has been accepted.

How would the World Trade Organization address this issue when it is brought to their attention by the party of the first part who says this is a disadvantage because it is either child or slave labor? Can you give me kind of a quick summary as to how this new organization would function in a situation like that?

Mr. KANTOR. Well, let me use the environment, because as you know, the discussion over labor standards is only in the preparatory committee and is not in the document itself. So therefore it would be easier to say that the WTO agreement does not tie environmental practices to trade sanctions at all, as you know. U.S. law makes this explicit in the Pelly amendment. As we proceed forward, we have done it on a very careful basis.

I would only add that it is interesting the Bush administration—and I think they are to be congratulated for this, and Ambassador Hills and President Bush were very explicit in terms of trying to get a work program in terms of slave labor, child labor, health and safety standards, freedom of association and the right to collectively bargain were all part of what they had advocated, and we have carried that on. This President has been particularly focused on that issue, as well as many others.

So the answer to your question is there are no ties to trade sanctions right now. We will proceed with the discussion in the new WTO, which I assume will be ratified by the Congress. And we will be careful and considerate as we proceed.

But you can't, in my personal view, avoid the discussion of this and other issues like competition policy and begin to address those barriers which have a real effect and a negative effect on our ability to sell our products and therefore continue to grow our economy here at home.

Mr. MCCANDLESS. I have one more, Mr. Chairman, if I may, very quickly. Under Secretary of Commerce Garten back in April called for an end to the process of linking most favored nation trade benefits to human rights conditions. We go back to the linkage aspect that we have been talking about: environment, labor, and so on and so forth.

There seems to be, in the minds of some people, a contradiction between this concept—as just pronounced in the periodical, from the Bureau of National Affairs, May 4—and what it is that I perceive that we are attempting to accomplish through GATT and its successor, the World Trade Organization.

Mr. KANTOR. I don't think so, with all due respect. I think there is a very bright line between human rights on one hand, and internationally recognized labor standards on the other. I think they are quite different. Not having child labor provisions or not allowing for freedom of association or collective bargaining are quite different than things like the Helsinki accords.

I haven't read that speech by Under Secretary Garten so I couldn't comment on it, but all I can say is that we do distinguish between the two and I think the former administrations did as well.

Mr. MCCANDLESS. Thank you, Mr. Ambassador.

Mr. CONYERS. Thank you, Mr. McCandless.

As you depart, Mr. Ambassador, I wanted to raise a question that Ralph Nader has communicated to this committee about the appeal process and the fact that it is very closed. There are no appeals. There are only member nations which can participate. It is a very severe, restricted process.

How do you assuage our fears that it may be a procedure that doesn't really lead anywhere and that it is a closed operation in which the challenges on appeals will be taken from the decisions?

Mr. KANTOR. One in general, I have no argument with my friend Mr. Nader on that point. In fact, the Uruguay Round calls for, and the WTO, more open procedures than ever, but they are not open enough. So in that, we agree totally.

This administration is committed to trying to open these procedures and these operations of the WTO in dispute settlement mechanisms in a much broader fashion than has ever been done before.

I have got to say that I was stunned when I took this job, which I have enjoyed so much, when I realized in the GATT and now even in the new WTO, which is much more open than its predecessor, that, for instance, dispute settlement proceedings are not open to the public, something that would be unheard of here in this country in administrative hearings or in court proceedings. That amicus briefs are not allowed. That nongovernment organizations are not allowed to intervene. That the public is not allowed to even to watch ministerial meetings of the World Trade Organization that deliberates over various concerns that might involve that organization.

We are going to continue to fight long and hard as we develop procedures for the WTO to try to open it up. And in that regard, Mr. Nader is absolutely correct. For a number of reasons, not the least of which is if we are going to build credibility for this organization, and if it is going to be able to be effective in its work, especially with the American public, it should be open in its processes.

The United States has continued to follow the policy under this administration, when we have access to documents filed by other governments, we will make them public. We think that is our obligation. We have been somewhat criticized for that. I believe it is the correct policy.

We think that we ought to make our documents public as well as others, and we will continue to work with this committee and Members of the Congress, nongovernmental organizations in a valiant attempt to continue to open these processes as wide as possible.

Mr. CONYERS. The struggle continues. Thank you very much.

Mr. KANTOR. Thank you, Mr. Chairman.

Thank you Mr. McCandless.

Mr. CONYERS. I would like now to call Dr. Mendelowitz, Mr. Flanigan, and Dr. Cooney.

Dr. Allan Mendelowitz is Director of International Trade Finance and Competitiveness of the GAO.

Mr. Matthew Flanigan is president of the Telecommunications Industry Association.

And Dr. Steve Cooney is senior policy director for international investment and finance of the NAM, National Association of Manufacturers.

We are delighted to have you all with us, gentlemen. We have your statements, which will be reproduced in their entirety. We would like to have you summarize briefly the contents and any observation about the statements that were made. And we will invite Dr. Mendelowitz to begin please.

Good morning.

STATEMENT OF ALLAN I. MENDELOWITZ, Ph.D., MANAGING DIRECTOR, INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS, U.S. GENERAL ACCOUNTING OFFICE

Dr. MENDELOWITZ. Thank you, Mr. Chairman. I will be happy to make a few summary oral comments and rely on the record for my full statement.

The issue of government procurement is important because governments are the largest single purchasers of goods and services in every major country. In recognition of this importance, the Tokyo Round negotiations under the GATT included, for the first time, an agreement to open up government procurement. Unfortunately, this agreement did not realize U.S. expectations.

In response to this, this committee approved the Buy American Act of 1987, which became title VII of the Omnibus Trade and Competitiveness Act. This piece of legislation was extremely important because it helped to focus USTR on Congress' concerns about discrimination in government procurement. It was also important because it conveyed to our trading partners the importance that the Congress placed on nondiscrimination in government procurement.

The United States made negotiations to improve the government procurement code an important priority in the GATT Uruguay Round negotiations.

The United States had three broad objectives in these negotiations. The first was to substantially broaden the code's coverage to include those entities, or agencies, not covered under the original code, such as public utilities, heavy electrical equipment, and telecommunications; second, expand the code to include new areas such as construction and other services; and third, to strengthen the code by improving the procedures required for procurements covered by the code.

The new code agreed to in December in the GATT and the supplementary United States-European Union agreement reached in April 1994 represents substantial improvement over the old code and should represent substantial opportunities for United States business.

The code was greatly expanded in terms of entities covered. The code was expanded in terms of new types of items that it covered including construction and other services. And the code was substantially strengthened in terms of dispute settlement by the cre-

ation in each country of bid-protect mechanisms modeled on the United States's bid-protest mechanisms, so that individual bidders have a right of action in all countries covered by the code to protest when they believe that they have been treated unfairly.

Despite the significant accomplishments, the United States didn't achieve everything. One of the important areas in which the United States did not make progress, was in gaining access to the European Union government telecommunications market. I would like to make reference to this in particular because we view it as extremely important.

At stake is a market in the European Union of some $15 or $20 billion, but the significance of this market goes well beyond just the opportunities within the European Union. Within the European Union, in countries that discriminate against non-national or non-European suppliers of telecommunications equipment, and finds a pattern in which the European suppliers receive payments for equipment sold that represent prices well above competitive world marketplace prices.

National champions such as Alcatel in France and Siemens in Germany, have received, for example, for central switching equipment, as much as 2 and 3 times the price that is paid in the United States for central switching equipment.

Because of this, the impact of the discrimination in the European Union spills over to affect the opportunities that the United States telecommunications industry faces in third-country markets. There is, in effect, a cross subsidy. When a Siemens in Germany or an Alcatel in France receives an above-market price, they receive a subsidy that covers the research and development cost for the products they produce, and they can compete against American suppliers in third-country markets selling their products at marginal cost.

U.S. suppliers, on the other hand, because they operate in the United States in an open and competitive market, do not have this kind of sheltered home-market procurement, and do not have home country super-normal prices with which to subsidize product development.

As we move forward, if the government procurement code and the GATT agreements are in fact ratified by the Congress, it is important for the Congress and the administration to stay on top of the implementation of obligations under the code. We assessed what happened under the Tokyo Round code and we saw that expected opportunities did not materialize, and that a lot of problems arose in implementation. We therefore urge the Congress and the administration to carefully monitor how the new code is carried out at new levels of government and its application to new types of items, such as services and construction contracts.

In this regard, title VII, which this committee is responsible for, will continue to be an important vehicle for the administration to use in combating discrimination. We also believe, because unfortunately almost no new countries have joined the code since it was signed originally in 1979, that title VII will continue to be important to try to get other countries to join the disciplines of the code.

Thank you.

[The prepared statement of Dr. Mendelowitz follows:]

United States General Accounting Office

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Testimony

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INTERNATIONAL TRADE

Efforts to Open Foreign Procurement Markets

Statement of Allan I. Mendelowitz, Managing Director
International Trade, Finance, and Competitiveness
General Government Division

GAO/T-GGD-94-155

INTERNATIONAL TRADE
EFFORTS TO OPEN FOREIGN PROCUREMENT MARKETS

SUMMARY OF STATEMENT BY ALLAN I. MENDELOWITZ, MANAGING DIRECTOR
INTERNATIONAL TRADE, FINANCE, AND COMPETITIVENESS
GENERAL GOVERNMENT DIVISION

The value of the original General Agreement on Tariffs and Trade (GATT) Tokyo Round Agreement, or code, on Government Procurement in 1979 did not meet expectations. That situation prompted passage of the Buy American Act of 1987, creating an instrument to further open foreign procurement markets. This legislation became title VII of the Omnibus Trade and Competitiveness Act of 1988. It requires an annual report identifying countries that discriminate against U.S. goods and services and the imposition of sanctions if negotiations to end the discriminatory procurement practices are unsuccessful within specific time frames. The United States also negotiated in the Uruguay Round to improve the code. Its three negotiating objectives were to: (1) broaden the code's coverage to those "entities," or agencies, that purchased telecommunications and heavy electrical equipment; (2) expand the code to include services and construction contracts; and (3) strengthen the code by improving the procedures it requires for the procurement it covers.

A new GATT government procurement agreement was reached on December 15, 1993, and a supplementary U.S.-European Union (EU) bilateral agreement was initialed on April 15, 1994. These new agreements should, if approved, fulfill many U.S. negotiating objectives because they cover services and construction, some government-owned utilities, and would add new provisions to improve the code's procedures; the new agreements also cover some state government level procurement.

Nevertheless, the United States did not gain access to some important foreign procurement, including the annual $15 billion EU government-controlled telecommunications market. Also, the United States considered the Japanese and Canadian offers for additional code coverage to be insufficient and only extended them further access at the central government level; it withheld access to U.S. state and government-owned utility procurement until more Japanese construction services and Canadian provincial procurement, including electric utilities, are covered by the code.

The new code would cover many new areas, but its effectiveness will depend on how well it is implemented. Evaluations of the Tokyo Round agreement showed that implementation was problematic in the past. Therefore, consideration should be given to careful monitoring of how the code is carried out in new areas, such as, services and construction contracts, and by other levels of government and government-owned utilities.

In its 1994 report, the U.S. Trade Representative did not identify any new countries under title VII. However, USTR said that it will continue sanctions against the EU for its discrimination in the telecommunications sector, based on an earlier report. While the Uruguay Round resulted in each signatory expanding its code coverage, only a few new signatories have joined the code. Title VII can be of future use in getting other countries to join the code, as well as in achieving unfulfilled U.S. negotiating objectives.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here this morning to testify on our preliminary analysis of recent negotiations involving international government procurement and our observations about the President's April 30, 1994, title VII report on discrimination in foreign government procurement.

BACKGROUND

Governments are the largest single purchasers of goods and services in every major country, creating a potential annual world market that is in the hundreds of billions of dollars. Most of this vast market has traditionally been closed to foreign businesses due to formal and informal administrative systems that discriminate in favor of domestic firms.

GAO has worked on this issue for over a decade. In 1983, we reported on problems with the Agreement, or code, on Government Procurement, which was negotiated during the General Agreement on Tariffs and Trade's (GATT) Tokyo Round of Multilateral Trade Negotiations. These problems included noncompliance with the code and difficulties with its implementation. Consequently, the code did not result in the expected overall value from opening foreign markets to U.S. goods. We concluded that the U.S. government needed to strengthen its efforts to monitor and enforce compliance with the code and suggested ways in

which this goal could be accomplished.[1] In 1987, we testified before this Subcommittee that U.S. expectations for creating foreign procurement opportunities for U.S. goods and services had still not been fulfilled. Furthermore, the total value of foreign opportunities opened by the code versus the value of U.S. opportunities opened to foreign goods was still balanced against the United States.[2]

That situation prompted this Subcommittee to approve the Buy American Act of 1987, which became title VII of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). It required the President to identify countries that discriminate against U.S. companies and goods and then impose sanctions if negotiations to correct their inequitable practices were unsuccessful. In response to your concerns about how the U.S. Trade Representative (USTR) would implement this new law, we reported to you in 1990 that USTR's first investigation started late, was not focused, and faced various difficulties in gathering the needed evidence.[3] The annual title VII report and your annual oversight hearings helped focus USTR's attention on international procurement issues and signaled other countries that there was serious congressional concern about their failure to open up their procurement markets to U.S. goods and services.

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[1]See The International Agreement on Government Procurement: An Assessment of its Commercial Value and U.S. Government Implementation (GAO/NSIAD-84-117, July 16, 1984) and Data Collection Under the International Agreement on Government Procurement Could Be More Accurate and Efficient (GAO/NSIAD-84-1, Oct. 25, 1983).

[2]See Combating Foreign Use of Discriminatory Government Procurement Practices (GAO/T-NSIAD-87-21, Mar. 25, 1987).

[3]See International Procurement: Problems Identifying Foreign Discrimination Against U.S. Companies (GAO/NSIAD-90-127, Apr. 5, 1990).

U.S. NEGOTIATING OBJECTIVES TO IMPROVE THE CODE DURING THE URUGUAY ROUND

Since the original Agreement on Government Procurement in 1979, USTR's strategy has been to focus on broadening the code to cover more of each signatory's procurement. The goals were to achieve unfulfilled Tokyo Round expectations and to rectify the imbalance in procurement opportunities between the United States and other signatories. To meet these goals, the United States had three specific objectives. The first was to broaden the code's coverage to those "entities," or agencies, that represented the "excluded sectors."[4] Negotiators hoped to trade U.S. coverage of subcentral entities (that is, state and local governments' procurement) for access to other signatories' public utilities, most notably telecommunications and electrical utilities. The second objective was to broaden the code to include service and construction contracts. And the third objective was to make the code work better by tightening the rules it applied to the procurement it covered.

[4]The code applies only to "entities," or agencies, explicitly named in the agreement. The original code generally did not cover those entities, including government-owned utilities, that purchased large amounts of telecommunications, heavy electrical, and transportation equipment. These were not covered at the time because the European Community (now the European Union) lacked jurisdiction over its member states' procurement in these "excluded sectors."

RESULTS OF THE URUGUAY ROUND

A new GATT agreement on government procurement was reached in Geneva on December 15, 1993. A supplementary U.S.-European Union (EU) bilateral agreement was initialed in Marrakesh, Morocco on April 15, 1994. These new agreements should, if approved, fulfill many of the objectives established in the early 1980s. While these procurement agreements may be a significant advance over the Tokyo Round, there are areas still not covered.

Under the December agreement in Geneva, each signatory offered to cover more central government procurement, subcentral government procurement, and procurement by other government-controlled entities, including utilities. However, under the new procurement agreement, signatories extended code benefits to each other only on a reciprocal basis, not a most-favored-nation basis.[5]

Generally, entities were added to eacn signatory's lists of coverage, and thresholds were established for new areas of coverage.[6] One major accomplishment of this agreement was

[5]Most-favored-nation treatment is a principle of nondiscrimination that commits all GATT signatories to extend the same treatment to all other signatories.

[6]The code does not cover purchases costing less than a minimum "threshold" value of 130,000 Special Drawing Rights, which is an international reserve asset used as the International Monetary Fund's official unit of account. Its value is based on a trade-weighted basket of major currencies and was equal to about $182,000 in 1992 for central government purchases of supplies and services. The threshold for state-level purchases would be about $497,000; for other government-controlled entities, such as the Tennessee Valley Authority, it would be about $560,000; and it would be about $7 million for construction contracts.

that for the first time it covered services and construction.[7] This coverage could create significant additional foreign opportunities for U.S. suppliers. Nevertheless, the United States maintained some general exclusions from coverage, such as preference programs for small and minority businesses. It also excluded some sensitive service sectors from coverage, such as transportation, research and development, and the federal research centers and laboratories.

Procedural improvements to the code were also agreed to in December 1993. The code would generally prohibit "offsets."[8] Signatories would have to provide a bid challenge mechanism for appealing their government procurement decisions. This improvement would create legal rights for foreign firms in each country under that country's national law.[9] Signatories would now be required to notify others when they privatize government entities and remove them from code coverage; they may have to provide compensation if there are objections to this removal from coverage. The code's dispute settlement provisions would be brought into conformity with the new Uruguay Round dispute settlement procedures, but with some modifications (e.g., shorter time frames for dispute resolution.)

Despite these accomplishments, U.S. negotiators were unable to reach agreement on opening up some important areas with EU, Japanese, and Canadian negotiators by the December 1993

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[7]The Buy American Act does not apply to services.

[8]"Offsets" are various concessions sometimes required by a purchaser. They include requiring bidders to provide (1) local content in the goods, (2) technology transfer to the purchaser, (3) some investment in the country, or (4) trade in other areas.

[9]A similar provision is part of the North American Free Trade Agreement.

deadline. However, last-minute negotiations between the EU and the United States were successfully concluded on April 13, 1994, and would enhance the December agreement. Further agreement was not reached with Japan and Canada.

The U.S.-EU bilateral agreement was initialed in Marrakesh, Morocco, and it would extend code coverage beyond that agreed to in Geneva on December 1993. The April agreement gave the EU access to the procurement of goods, services, and construction by 37 U.S. states. It also gave the United States access to the procurement of goods (only) by all EU levels through the code. The agreement also added procurement by government-controlled entities. In this category, the EU granted code coverage for the procurement of goods, services, and construction by electric utilities and ports in return for access to certain U.S. federal electric utilities (e.g., the Tennessee Valley Authority) and several port authorities (including their airports).[10] The additional U.S. (subcentral) coverage given to the EU under the April bilateral agreement is expected to be extended to many other signatories once they reach agreement.

Nevertheless, the United States did not gain access to some important foreign markets. The one major U.S. objective not achieved was coverage of EU government-controlled telecommunications. This market is estimated to be worth about $15 billion annually. Also, the United States considered the Japanese and Canadian offers for additional coverage to be

[10]Procurement of goods and construction (not services) by electrical utilities had already been covered by an earlier, but temporary, bilateral memorandum of understanding between the United States and the EU.

insufficient. Therefore the United States only extended them further access at the central government level; it withheld access to U.S. subcentral and government-owned utility procurement until more Japanese construction services and Canadian provincial procurement, including hydroelectric Crown Corporations, are covered by the code.

POTENTIAL IMPACT OF THE AGREEMENT

Together, the December and April agreements broaden code coverage significantly, primarily because of the inclusion of services and construction, subcentral-level procurement, and government-owned utilities. U.S. negotiators are confident that the imbalance between U.S. and foreign procurement opportunities will end. The agreement also adds new disciplines, or provisions, that are designed to improve enforcement of the code's procedures.

However, we cannot with any certainty calculate the total benefit of the new agreement from all signatories, nor can we say whether it would correct the imbalance in code-covered opportunities between the United States and other signatories. Some estimates of new total code coverage have been given, but they vary in reliability. In December, GATT estimated that the agreement would broaden coverage tenfold annually, to $700 billion, but some negotiators did not consider this figure accurate. Furthermore, any estimate of total code coverage would not necessarily reveal the benefits for the United States. The results of the Uruguay Round must be evaluated through the bilateral negotiations with each signatory because the code was negotiated on a reciprocal rather than a most-favored-nation basis. The

most reliable figures available are based on an independent study of procurement data conducted as part of the U.S.-EU bilateral negotiations. This study estimates that the United States would gain reciprocal access to EU code-covered opportunities of $103 billion, and the United States would open up comparable opportunities to the EU.[11] Unfortunately, estimates for other countries' coverage, including Japan, Canada, and the Nordic countries, are educated guesses and are not based on studies of historical procurement data.

The new agreement, if approved, would enter into force at the beginning of 1996. Even so, it may take many years for the changes to be fully implemented, new procurement opportunities to be created, and actual purchases of U.S. goods and services to be affected. Over time, the procedural improvements should help the code's enforcement and eliminate market barriers. For example, the creation of local bid challenge mechanisms would allow suppliers to take individual actions to enforce their rights directly in foreign countries. The prohibition against offsets removes a burden placed on U.S. companies trying to enter foreign procurement markets.

Representatives of the private sector generally supported the new agreement. No Industry Sectoral Advisory Committees (ISAC) opposed the December 15, 1993, agreement, though two reserved judgment pending further negotiations.[12] However, after the April Marrakesh

[11]See European Union--Government of the United States Study of Public Procurement Opportunities, Deloitte Touche Tohmatsu International (Houston, Texas: Mar. 22, 1994).

[12]ISAC 5 (Electronics and Instrumentation) and ISAC 7 (Ferrous Ores and Metals) did not take a position on the initial agreement.

agreement, an industry association representing U.S. telecommunications equipment manufacturers told us their members were very frustrated with the final outcome. They felt that 5 years of difficult negotiations had brought them no benefit.

USTR told us U.S.-EU negotiations on telecommunications will continue. Also, USTR hopes that future bilateral discussions with Japan and Canada may resolve differences over limits on covering construction procurement and provincial-level procurement, including hydroelectric corporations, respectively. Then, U.S. subcentral and government-owned utility procurement might be offered to these two countries as well. While U.S. negotiators hope that future talks will address all of the previously mentioned omissions, USTR has no immediate plans to restart negotiations.

POTENTIAL IMPLEMENTATION ISSUES

The effectiveness of the code depends on its enforcement, both at home and abroad. We know from evaluating the implementation of the Tokyo Round procurement agreement that implementation was problematic, so similar problems might be expected as the code is broadened. New problems may arise because the code is to be extended into new areas, namely services and construction, and would be applied by new levels of government. Furthermore, all areas and levels would be subject to new provisions, such as the creation of local bid challenge mechanisms. U.S. and foreign government problems with implementing the code would remain subject to action under the agreement's dispute settlement provisions.

There are also unanswered questions about the new agreement. For example, U.S. subcentral-level procurement was offered for code coverage only after 37 state governors responded to a request from USTR. The governors were asked to volunteer entities for code coverage. USTR took this voluntary approach to address a concern that the federal government might appear to be preempting states' control of this area. USTR officials told us that specific legislation is not needed to formalize the governors' volunteer commitments. While such federal legislation was considered to ensure consistency and stability in the states' commitments, there were concerns about how to craft the legislation and avoid the preemption issue. Instead, USTR officials told us that overall congressional approval of the GATT agreement would secure the state governments' procurement for code coverage. Nevertheless, a representative of the National Conference of State Legislatures still expressed concern that the code would still preempt the states' ability to legislate in this area and that there could be state court challenges to state laws that might conflict with the code.

Another potential implementation issue is whether actual foreign procurement opportunities meet expectations for code coverage and whether foreign opportunities would balance U.S. opportunities under the code. If problems exist, there are at least two methods to address deficiencies and gain access to specific sectors or countries not covered by the new agreement. First, future negotiations can seek access to markets having good potential for U.S. suppliers. Second, discrimination in areas or countries not covered by the code are subject to action under U.S. trade laws, such as title VII--the Buy American Act of 1988.

If the agreement is approved by Congress, the next challenge for the administration is implementing and enforcing the agreement, as well as broadening it further. Some of the potential issues include:

-- how to best facilitate domestic implementation of the code by covered federal, state, and government-controlled entities for the procurement of goods, services, and construction to ensure that the United States is fulfilling its code obligations;

-- what information needs to be gathered for monitoring foreign signatories' implementation of the code to ensure that U.S. goods and services receive fair treatment; then, if access to foreign markets is denied or discrimination takes place, what actions the U.S. government should consider taking to remove these barriers and ensure that U.S. rights under the code are enforced;

-- what new initiatives are needed to achieve unfulfilled objectives, such as gaining access to EU telecommunications, Japanese construction, and Canadian hydroelectric procurement markets.

OBSERVATIONS ON TITLE VII

Now I would like to make some observations about the USTR's 1994 title VII report on discrimination in foreign government procurement, issued on April 30. Countries identified under title VII are potentially subject to sanctions if consultations do not address the discrimination within specific time frames.

USTR did not newly identify any country under title VII as meeting the statute's criteria for discriminating against U.S. products or services in making government procurement. USTR is continuing the identification of the EU for its discrimination in the telecommunications sector. Again, this was the one objective on which the United States and the EU failed to reach agreement in bilateral negotiations. Key issues between U.S. and EU negotiators on telecommunications remain unresolved. The United States insists that state-owned European telephone companies be covered by the code. The EU wants the United States to include the regional bell operating companies (RBOC); the United States refuses, because RBOCs are private companies and their procurement decisions are commercially driven and thus outside of government control. Alternatively, the EU would have covered telecommunications, if federally mandated Buy American restrictions were eliminated for U.S. mass transit, airport, highway, and waste water projects; in the end the two sides considered these areas too sensitive to be included.

As a result, the United States is continuing trade sanctions against the EU for its discrimination in telecommunications procurement. These sanctions originated from a 1992 title VII investigation. These sanctions were put in place in May 1993, after a title VII review in February 1992 found the EU Utilities Directive to be a discriminatory procurement policy with regard to government-owned telecommunications.[13] USTR reported that these sanctions restricted EU access to U.S. contracts worth $20 million- $25 million in 1992. The EU responded by imposing sanctions against the United States worth $15 million. However, USTR has also reported that these sanctions are being imposed in an effort to open an EU market worth $14 billion. Now that the Uruguay Round has ended and U.S.-EU bilateral agreements have been reached, the EU has been given access to billions of dollars in new U.S. procurement opportunities. Thus, it appears to us that even with these sanctions, U.S. negotiators have reduced leverage to compel the EU to open its government-controlled telecommunications market.

The 1994 title VII report discussed other countries as well. USTR announced it would not identify Japan under the statute, but because of "serious concerns" Japan will be subject to an "early review" of its telecommunications and medical technology procurement markets. The 1994 report also provided information on USTR's concerns over the procurement practices of Australia, Brazil, China, and the computer and supercomputer sectors in Japan. While not

[13]USTR noted that Germany, Greece, Spain, and Portugal are not included in the sanctions because they "do not discriminate against the United States in this sector."

naming these countries under title VII, USTR said that it "will follow closely developments in these markets over the coming year."

USTR's strategy, used by previous administrations since title VII became law is to give priority to negotiating access to foreign procurement markets before officially identifying countries under the statute. For example, in 1990, no countries were named under the statute as discriminating, but USTR provided information on its concerns about the practices of certain members of the EU, Japan, and Australia in its report to Congress. In 1991, USTR named Norway for discrimination in a toll road collection system procurement and again described concerns about certain members of the EU, Japan, and Australia. In 1992, USTR continued to name Norway and named the EU for its discrimination in procurement of telecommunications and heavy electrical equipment. USTR then expressed concern about the practices of Australia, China, and Japan. In 1993, USTR named Japan for discrimination in its construction market; maintained its identification of the EU; and described concerns about Australia, China, and Japan regarding its supercomputers, computers, and telecommunications sectors.

While USTR's strategy has led to an expansion in each signatory's code coverage in the Uruguay Round and the U.S.-EU bilateral procurement agreements, only a few countries have joined the code as new signatories; only Israel, and Greece, Portugal, and Spain (as new members of the EU) have joined the code since the original Tokyo Round agreement. Also, one new signatory, South Korea, will join the code when the new agreement goes into effect.

Offsetting these additions, Singapore and Hong Kong, both original signatories to the code, did not join the new agreement.

USTR's may now turn attention to encouraging other countries join the code, even though there are still areas that code signatories have yet to cover, such as telecommunications and transportation equipment. USTR has said that Australia, China, and Taiwan are priority countries for negotiating future procurement agreements. Title VII can be of importance in initiating negotiations with nonsignatory countries about joining the code and to opening their procurement markets to U.S. goods and services.

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Mr. Chairman and members of the Subcommittee, this concludes my prepared remarks. I will be pleased to respond to any questions you may have.

(280098)

Mr. CONYERS. Thank you very much.

From GAO, that is very important testimony, and we have appreciated your work particularly in this very complex area of international trade.

We now have the Telecommunications Industry Association president to add his comments to those of GAO.

Welcome.

STATEMENT OF MATTHEW FLANIGAN, PRESIDENT, TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Mr. FLANIGAN. Thank you, Mr. Chairman, and to members of the committee.

My name is Matt Flanigan. I am the new president of the Telecommunications Industry Association. I very much appreciate the opportunity to express our views to you on the market access problems for our member companies around the world in the area of government procurement and on the importance of open markets to worldwide trade in telecommunications.

Obtaining greater access in foreign telecommunications equipment markets is one of the key priorities of the Telecommunications Industry Association, TIA.

TIA is a full-service national trade association representing 570 manufacturers and suppliers of telecommunications equipment. TIA member companies, 8 percent of which are small and medium-size enterprises, manufacture or supply virtually every product used in today's telecommunications network.

Our members are competing for business in the world market for telecommunications products. In fact, a recent survey of our members indicates that over 80 percent are now engaged in international sales. Thus, we are very concerned about fair competition in those markets.

Recognizing that the Committee on Government Operations has oversight responsibility on how USTR evaluates foreign government procurement, especially with respect to section 7003(d) of the Trade and Competitive Act of 1988, we greatly appreciate the subcommittee's invitation to discuss our concerns regarding this adverse impact of government procurement discrimination against U.S. products.

TIA and its member companies are committed to working for open telecommunications markets around the world and are significantly affected by public procurement policies and practices.

Telecommunications has been recognized as a necessary prerequisite to economic growth and, as such, is a critical ingredient for developing countries seeking to jump start their economies as well as for developed countries which are seeking to enhance their competitiveness in an increasingly global marketplace. To encourage telecommunications manufacturers around the world to produce the most sophisticated products possible at the least cost requires free and fair competition in telecommunications equipment in every market. Enhancing——

Mr. CONYERS. Mr. Flanigan, excuse me. What I need is a summary, and if you can, do you have any ideas that you would add on to the GAO testimony, which expressed this great concern about the obvious problem that you have with these agreements?

Mr. FLANIGAN. We have been working closely with the Ambassador's office. We have recently sent a letter there. And we are willing to continue that and anxious for a level playing field in the markets that our members are trying to deal in. We have particular concern about the European Community, if I could just make some comments on that.

Mr. CONYERS. All right.

Mr. FLANIGAN. Within the European Union we have experienced a long and agonizing fruitless negotiating process. This has been going on for some time now. Under title VII of the 1988 Trade Act, USTR was required to identify countries in the following categories. No. 1, the signatories not in good standing; two, those that discriminate against U.S. firms; and three, nonsignatories whose governments discriminate against U.S. products.

When the USTR announced the 1993 title VII decision, it stated that sanctions would be imposed against the European Community to coincide with implementation of the European Community's own utilities directive, officially authorizing discriminatory procurement procedures. Essentially, the USTR rolled one procedure into another with the anticipation that further progress could be made.

In May 1993, USTR announced the sanctions against the European Community. This, we feel, was a very minimum effort where the sanctions amounted to approximately $20 million. TIA believed that damages to U.S. companies as a result of these discriminatory practice are far in excess, as you previously heard, in the multibillion dollar range.

As it has turned out, in March 1994, USTR's final package resulting from the GATT Procurement Code negotiations which included procurement of heavy electrical equipment has been accepted, but the USTR was unable to get an agreement on telecommunications procurement. This is a major concern to our members, and again we are anxious to work with USTR.

And I will leave it at that, if that is the committee's request.

[The prepared statement of Mr. Flanigan follows:]

TESTIMONY OF

MATTHEW FLANIGAN

PRESIDENT

OF THE

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

BEFORE THE

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE

HOUSE GOVERNMENT OPERATIONS COMMITTEE

MAY 19, 1994

Mr. Chairman and Members of the Subcommittee :

My name is Matthew Flanigan. I am president of the Telecommunications Industry Association. I very much appreciate the opportunity to express our views to you on the market access problems for our member companies around the world in the area of government procurement and on the importance of open markets to worldwide trade in telecommunications. Obtaining greater access in foreign telecommunications equipment markets is one of the key priorities of the Telecommunications Industry Association (TIA).

TIA is a full service national trade association representing 570 manufacturers and suppliers of telecommunications equipment. TIA member companies, 80 percent of which are small and medium-size enterprises, manufacture or supply virtually every product used in today's telecommunications network. Our members are competing for business in the world market for telecommunications products--in fact, a recent survey of our members indicate that over 80 percent are engaged in international sales. Accordingly, they are very concerned about fair competition.

Recognizing that the Committee on Government Operations has oversight responsibility on how USTR evaluates foreign government procurement, especially with respect to section 7003 (d) of the Trade and Competitive Act of 1988, we greatly appreciate the Subcommittee's invitation to discuss our concerns regarding the adverse impact of government procurement discrimination against U.S. products.

TIA and its member companies are committed to working for open telecommunications markets around the world and are significantly affected by public procurement policies and practices, since much of the products they manufacture is purchased abroad by government-owned telephone companies.

Telecommunications has been recognized as a necessary prerequisite to economic growth and, as such, is a critical ingredient for developing countries seeking to "jump start" their economies as well as for developed countries which are seeking to enhance their competitiveness in an increasingly global marketplace. To encourage telecommunications manufacturers around the world to produce the most sophisticated products possible at the least cost requires free and fair competition in telecommunications equipment in every market. Enhancing market access opportunities abroad to match the openness of the U.S. market is therefore a fundamental goal of TIA.

There can be little doubt that the U.S. market is open to free and fair competition in telecommunications equipment. FCC deregulatory actions over the past twenty years coupled with the divestiture of the Bell Operating Companies by AT&T have created a huge open market for telecommunications products. Foreign telecommunications manufacturers are very active in the U.S. market. All of the major foreign telecommunications producers now manufacture in the U.S. and are doing steadily increasing business with the Bell Operating Companies and other telephone companies.

While the U.S. market is open, U.S. telecommunications equipment manufacturers face less than an open markets abroad. Foreign government buy-national policies, cultural preferences and other non-tariff barriers have effectively precluded U.S. companies from achieving comparable competitive opportunities in many countries. These restrictions endanger the jobs of over 500,000 U.S. high technology workers and over 300,000 jobs directly related to our telecommunications industry. Moreover, restrictive policies provide our competitors with a significant unfair advantage since they receive top dollar for their systems without competition. The U.S., of course, allows unrestricted competition.

We are particularly disappointed that, despite long-standing discussions to broaden the scope of the GATT Government Procurement Code (Code) to include government telephone utilities, to date, most of our major trading partners have refused to subject their principal carriers to Code coverage. In most countries around the world, the largest purchaser of telecommunications equipment is the government-owned telecommunications operator, usually referred to as PTT. Because of their government ownership, they are not typically driven by competitive forces and typically purchase their equipment needs from national suppliers, with little regard to price or sophistication of equipment.

Foreign government telecommunications procurements are conducted over multi-year cycles requiring a high degree of technical collaboration and financial cross-subsidization between the procuring government entity, the PTT, and the national supplier. In effect, the procuring entity stipulates the product specifications, and thereby collaborates in the development of the product or service.

I'd like to take a moment to explain why market access is so important. Because of the high cost of developing state-of-the-art telecommunications products, economies of scale are crucial for success in the telecommunications equipment business, especially for small and medium size companies. It is clear that, all things being equal, if our competitors have a monopoly in their home market, plus free access to our market, and we have access to our market alone, our competitors will win out in the long run. U.S. companies need access to our major competitors' markets to subject such competitors to the rigors of price competition. Such competition will force the prices of our competitor's products toward their costs, thereby eliminating the monopoly profits which can be used to undercut U.S. suppliers in third countries or in the U.S. market. In other words, only free and open markets will assure U.S. manufacturers fair competition in the world telecommunications

marketplace. As procurement by foreign government-owned or controlled PTTs represent the bulk of the foreign market opportunities, it is crucial to resolve these inequities.

Over the last few years, the U.S. government, supported by TIA, has made many attempts to create free and open competition in the international marketplace. A key development was the enactment of the Omnibus Trade and Competitiveness Act of 1988 which has several provisions to address the problem of unequal market access for procurement of telecommunications equipment.

The countries of particular concern in terms of lack of market access for government procurement are those with large internal markets that export substantial amounts of telecommunications equipment to the United States. These countries include countries of the European Union, Japan, and Brazil.

European Union.--With the European Union, we have experienced a long, agonizing and fruitless negotiating process. In 1989, under Section 1377 of the Trade Act which requires USTR to evaluate foreign telecommunications market opportunities including government procurement practices; to negotiate away any restrictive practices; and, failing a negotiated settlement, to take retaliatory action, USTR named the European Community (predecessor to European Union) as a "country" which restricted access by U.S. telecommunications manufacturers. On February 21, 1992, USTR announced that the 1377 process with the EC had been completed, but yielded no agreement. However, simultaneously USTR named the EC under another part of the Trade Act, Title VII. Under that section, the U.S. government is required to identify countries in the following categories:

1. Signatories "not in good standing" to the Agreement;
2. Those "that discriminate against U.S. firms in the signatory government's

procurement of products or services not covered by the Agreement;" and

3. Non-signatories whose governments discriminate against U.S. products or services in their procurement.

The conference agreement, as established under Title VII, requires the "President to ...submit a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurement.."

When USTR announced the Title VII decision, it stated that sanctions would be imposed against the EC to coincide with implementation of the EC's own Utilities Directive, officially authorizing discriminatory procurement procedures. Essentially, USTR rolled one procedure into another with the anticipation that further progress could be made.

In April 1993, USTR worked out an agreement with the EC on government procurement of heavy electrical products procured by EC electrical utilities, one of the sectors for which the EC was named under Title VII in 1992. However, no agreement was reached with the EC for telecommunications procurement.

In May 1993, USTR announced the long-awaited sanctions against the EC for their continued discrimination in telecommunications procurement. Scaled back from earlier proposals, the sanctions amounted to some $20 million in reduced business for EC firms bidding on selected U.S. government procurements--less than a slap on the wrist. TIA believes the damage to U.S. companies as a result of EC discriminatory practices is in the multibillion dollar range. TIA feared that these sanctions would do little to encourage the EC to conclude a meaningful dialogue with the U.S. on telecommunications procurement.

As it has turned out, our fears were completely justified. In March 1994, USTR announced the final package resulting from the GATT Government Procurement Code negotiations. This package included the agreement worked out with the EC in 1993 on procurement of heavy electrical equipment. But, USTR was unable to get an agreement on telecommunications procurement. While USTR announced that it would continue to pursue negotiations with the Europeans on telecommunications, TIA holds little hope that such a deal will be concluded anytime soon.

At stake in the EU is a government telecommunications equipment market worth close to 20 billion dollars. With this huge market potential at stake, TIA is extremely unhappy that an agreement on telecommunications could not be reached. This has been an extraordinarily frustrating experience. As chronologued above, negotiations with the Europeans have been ongoing for five years, with nothing to show for it--except the lost billions of dollars of sales by U.S. companies. In fact, TIA is reviewing the options with our member companies regarding what TIA's position should be. One option under consideration is that TIA will actively oppose the Government Procurement Agreement. We believe the telecommunications industry worked extremely hard on bringing USTR state and local government concurrence on open procurement, and now our industry is the principal casualty of the package.

One issue of concern for TIA has been what we have perceived is a lack of serious intent on the part of the Europeans to resolve this issue. From our vantage point, it appears that they are able to have their cake and eat it too. They get open access to our market, because our telephone companies are private entities and driven by motivations of efficiency, superior quality, price, and profit. In Europe, as state-owned entities, those motives are not apparent.

From what we now understand, the Europeans have finally acknowledged the fact that our telecommunications procurement market is open and that theirs is not and that they are of roughly equal size. From our perspective, it is clear that the fair deal would have been for them to match the openness of the U.S. market. However, "fairness" is not necessarily a word the Europeans seem to be too familiar with. This is certainly troubling in this instance, but even more troubling for future trade relations. TIA recommends that a new, fresh, creative approach to dealing with Europe be considered--one that views the relationship as the Europeans view it, i.e., as a game of political checkers, rather than the traditional U.S. view of attempting to forge a fair economic relationship between strategic allies.

Japan--Historically, U.S. producers have been locked out of the Japanese market. Although over the past ten years, the United States and Japan have entered into major agreements in the telecommunications area, imported products still only account for approximately two percent of Japan's total telecommunications market. There are, however, some bright spots to point to, that demonstrate progress towards a more open marketplace.

One agreement -- the so-called NTT agreement -- was designed to open up the then government-owned telephone monopoly to U.S. suppliers. Although NTT now has some minority private sector shareholders and must compete with so-called new common carriers, it is currently 66 percent owned by the Japanese government and continues to account for the majority of government purchases of telecommunications equipment.

Under the agreement, U.S. companies have sold around $3.6 billion of equipment to NTT since 1981. Sales over the past 3 years alone have amounted to $1.9 billion and have been increasing by a larger percentage than previous years. I believe that this is due in large part to the efforts of top NTT management. Despite this progress, however, the U.S. share of

the NTT market continues to be only around 7 percent and certain procedural and policy-related barriers to full competition remain.

TIA urges the Administration to pursue negotiations with Japan to improve the functioning of the NTT Agreement and to achieve measurable progress in increasing the foreign share of the NTT market. TIA believes this can be accomplished by negotiating modifications to the agreement to add certain features such as dispute settlement, pre-network-design consultations with interested suppliers, liberalizing the procurement procedures for products NTT buys for resale to corporate end-users, and others. TIA believes that these discussions should take place without regard to the timetable of restarting the "Framework Talks." TIA also urges the Administration to evaluate the procurement patterns of NTT's subsidiaries for mobile communications and data communications to ensure that they are meeting the obligations they independently committed themselves to.

For non-NTT government entities, in 1993, the Framework negotiations were initiated to improve market access to the Japanese government procurement market. The percentage of foreign-made products sold to these agencies is minuscule and U.S. industry has identified a variety of barriers--among them, discriminatory standards setting, non-transparent bid evaluation and selection practices, inadequate bid protest and subcontracting procedures and cumbersome qualification processes--that must be addressed before there will be a full and fair opportunity for U.S. suppliers to compete in the Japanese public procurement market. As with NTT, TIA urges the Administration to seek a resolution to these negotiations that will ensure measurable progress. We hope the Framework negotiations will resume shortly to address these pressing problems. Should these negotiations prove unsuccessful, other action--including possible identification of Japan under Title VII--may be necessary.

Brazil--The market access environment in Brazil, especially in the area of government procurement has been deteriorating recently. The Brazilian government has recently issued or considered issuing several directives related to the procurement of telecommunications products purchased by the government-owned telephone companies in Brazil--Embratel and Telebras. Attached is a summary of the recent discriminatory actions taken in Brazil. TIA urges the Administration to pursue these problems aggressively.

Other Countries--While the countries listed above represent the most problematic market access concerns of TIA and its members, there are also concerns in other countries. For instance, the regulatory structure in Taiwan is very restrictive with respect to type approval and usage of telecommunications equipment and presents limited opportunities for U.S. suppliers. The situation in Korea, while improved since the agreement signed in 1992, continues to present problems in the area of intellectual property protection. It appears that Korea Telecom, the government-owned telephone company has a history of procuring products that are known to be made with pirated technology.

In summary, market barriers in government procurement still exist in many countries. Since the U.S. market is open, the U.S. must redouble its efforts to eliminate foreign trade barriers to remain competitive. Efforts, both bilaterally and multilaterally to bring about a fully competitive world market for telecommunications equipment are important to pursue. The U.S. telecommunications supplier industry is second to none in technology and efficiency and given a level playing field internationally, would achieve even more dramatic rates of growth.

Thank you again for the opportunity to appear here today. I'd be pleased to answer any questions you may have.

Mr. CONYERS. Well, do you have any suggestions? Are you satisfied with the energy level and commitment of our trade reps in terms of getting a more equitable resolution of this problem?

Mr. FLANIGAN. We have been assured by the Ambassador's office that they are going to work hard to open up these discussions again and try and conclude some satisfactory results for the telecommunications manufacturers. We are very cautious about this. And we would like to work with them to make sure that those negotiations are concluded to benefit our members.

Mr. CONYERS. Very good. Let me now recognize the senior policy director for the National Association of Manufacturers, Dr. Steve Cooney.

STATEMENT OF STEPHEN COONEY, Ph.D., SENIOR POLICY DIRECTOR, INTERNATIONAL INVESTMENT AND FINANCE, NATIONAL ASSOCIATION OF MANUFACTURERS

Dr. COONEY. Thank you, Mr. Chairman. And in view of the fact that I was here before, and in view of the fact of these other testimonies, I would like to restrict my remarks primarily to what new points I can bring to the table at this time and maybe answer some of the questions that you have raised here from our view at the NAM.

We are always pleased to be here, of course. The main point of the testimony is that we support these agreements that the USTR has brought back in April. I would first like to add the point, building on what Dr. Mendelowitz said, this will give us full access in the European Government procurement market down to a level of $182,000. I think that figure has not been mentioned yet, but that is the contract level that we are dealing with here. That is a significant level, I think, to many of our smaller manufacturers who might include their products as part of a bid.

We also support, of course, the continuation of the electrical utilities agreement. The NAM further accepts inclusion of the procurement of State governments and other sub-Federal entities in coverage under the United States-European Union agreement. We believe this was probably necessary to assure access of United States products to European public authorities procurement of products at the subnational level.

We would also note that unfortunately some of our other GATT Government Procurement Code partners, notably Japan and Canada, will not get comparable access in the United States market because they did not make comparable offers of their own at the subnational level. And we want to note that difference here.

Along with my other colleagues at this table, we are very disappointed that the agreement fails to cover telecommunications and other utilities. And we certainly support continued negotiations to end European discrimination against United States products and discrimination of other countries in these markets.

With respect to telecommunications, both United States and European Union descriptions of the negotiations, as you heard Ambassador Kantor already indicated, and that no agreement could be reached because the European Union's negotiators requested elimination of Buy-American provisions as a price for an European Union-United States telecommunications deal. The goal of the ne-

gotiations in our view should be a balanced agreement within the telecommunications sector. Such an agreement should not include GATT discipline over the procurement of U.S. investor-owned telephone companies and public utilities. No case has been made that such entities have ever followed government-mandated practices that discriminate against products from foreign sources.

I would also add to another point Mr. Mendelowitz made on telecommunications. The European Union's own internal market reports indicate the high cost to European industry of their telecommunications procurement discrimination. It is true that it helps subsidize their competition here, but at the cost of making their own user industries uncompetitive or less competitive in Europe.

Another point relates to your support for the maintenance of current U.S. sanctions. Those sanctions exempt certain countries which do not apply the European directive currently.

Spain, Portugal, and Greece are presently exempted, but only because they are given a temporary derogation from applying the European telecommunications directive or utilities directive in a discriminatory manner. Also when four European economic area countries currently applying for membership, the Austria, Finland, Sweden, and Norway, join the European Union, they will also be required to apply the discrimination in article 36. Thus unless future United States-European Union negotiations are successful in removing this trade barrier, its application would be implemented in seven additional countries in Europe and that is something we should try to avoid if we can.

Looking at article 36 briefly, I described it last year and I described again in this year's testimony, how it discriminates against U.S. products. I want to go into a little more detail than last year how article 36 of the European utilities directive is illegal under the GATT. I am talking about the current rules.

Article 3 of the GATT specifically exempts only government procurement from national treatment rules, not the procurement of investor-owned entities operating under government regulations. The European Union utilities directive violates the GATT because it applies to certain named private sector entities. As European governments privatize more utility entities to alleviate budget difficulties and encourage greater market efficiencies, this violation will grow.

Finally I would like to add a point to the trade statistics at the end of my testimony. These are all important areas, but I would like to reaffirm on the importance of telecommunications based on this morning's release of new trade data. Our telecommunications exports increased about 10 percent or $280 million in March. I think that shows the importance of getting coverage of this area by these agreements.

Thanks very much for the opportunity to testify, Mr. Chairman.

[The prepared statement of Dr. Cooney follows:]

TESTIMONY OF
STEPHEN COONEY
SENIOR POLICY DIRECTOR, INTERNATIONAL INVESTMENT AND FINANCE
NATIONAL ASSOCIATION OF MANUFACTURERS
on
INTERNATIONAL PROCUREMENT AND THE COMMERCIAL EFFECTS OF THE MULTILATERAL GOVERNMENT PROCUREMENT AGREEMENT
before the
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, DC
May 19, 1994

Mr. Chairman, I am Stephen Cooney, Senior Policy Director for International Investment and Finance at the National Association of Manufacturers. The National Association of Manufacturers of the United States of America is a voluntary business association of approximately 12,000 member companies and subsidiaries, large and small, located in every U.S. state. Members range in size from the very large to more than 9,000 smaller manufacturing firms, with fewer than 500 employees. The NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

Summary of NAM Position on US-EU and Multilateral Agreements on Public Procurement

I am pleased to be asked to testify today, to review progress made by U.S. negotiators since this committee reviewed the U.S.-European memorandum of understanding of April 1993. This is a subject that the NAM has followed very closely for several years. Reform of European Community control over the public procurement process in the 12 member states was included as a major component of the program to complete a European "Single Internal Market" ("EC-92") by the end of 1993. In general, U.S. business strongly supported this part of the EC-92

program, including the opening of national utilities procurement markets. But U.S. exporters' access to this market has been impeded by Article 36 of the Public Procurement Utilities Directive, which went into effect in 1993.

The NAM has therefore also supported the U.S. Trade Representative's efforts to negotiate an agreement with the European Union (EU) to obtain national treatment in Europe for U.S. products and to broaden the GATT Government Procurement Code during the Uruguay Round of trade negotiations.

Today's hearing reviews the results of those negotiations, as embodied in bilateral and multilateral agreements signed at Marrakesh last month. In general, the NAM position is as follows:

- The NAM supports the US-EU and GATT agreements on public procurement, signed April 13-15, 1994.
- The NAM is disappointed that telecommunications and other important utilities sectors were not covered by the agreement. We hope that new negotiations to cover these sectors can be inaugurated and completed as soon as possible.
- The NAM continues to oppose the application of GATT discipline to the procurement of U.S. investor-owned telephone companies and public utilities.
- The NAM believes that the results of these agreements will improve market access for important categories of our most competitive U.S. exports.

In the balance of the testimony, I will provide further background on the NAM's views and amplify these points.

US-EU and Multilateral Public Procurement Agreements

The NAM supports both the US-EU agreement announced on April 13, 1994, and the GATT Government Procurement Agreement as completed on April 15, 1993. These agreements will enlarge the range of central government procurement available to all present GATT Code signatories, and will also open a wide range of European procurement at the sub-national level in European Union member states to U.S. producers. Basically, U.S. exporters to the EU will be covered by all the Internal Market rules covering the procurement of goods by public authorities at the national, regional and local levels throughout Europe above a $280,000 contract threshold. This agreement will take effect from January 1, 1996.

The bilateral US-European temporary memorandum of understanding of 1993 on access to procurement of electrical power utilities is also extended until the Government Procurement Agreements takes effect on January 1, 1996. This insures no break in coverage under non-discriminatory national treatment rules in Europe for U.S. exporters of heavy electrical equipment and other supplies to European electrical power entities -- whether publicly or privately owned. The NAM supported this agreement in testimony before this committee in 1993, and continues to do so.

Inclusion of U.S. State Government Procurement

The NAM accepts the inclusion of the procurement of state governments and other sub-federal entities in coverage under the US-EU agreement. This was probably necessary to ensure access for U.S. products to European public authorities' procurement at the sub-national level. Some other present GATT Government Procurement Code members, notably Japan and Canada, do not receive comparable access to the U.S. state and local public procurement markets, because they did not make comparable offers in the multilateral negotiations. The USTR has stated that

only Israel and Korea will receive such state and local access, along with the members of the EU.

Agreement Fails to Cover Telecommunications and Other Utilities

The NAM is disappointed that negotiators were unable to reach agreement to cover telecommunications and other sectors besides electrical power, for which the EU's Utilities Directive continues to discriminate against U.S.-made products. We support continued negotiations to end European discrimination against U.S. products and discrimination in other countries in these markets.

With respect to telecommunications, both U.S. and EU descriptions of the negotiations indicated that no agreement could be reached, because the EU's negotiators demanded elimination of certain "Buy America" provisions in other sectors as the essential price for a US-EU deal covering telecommunications. The goal of future negotiations should be a balanced agreement within the telecommunications sector. As I stated in the general summary, however, such an agreement should not impose GATT discipline over the procurement of U.S. investor-owned telephone companies and public utilities. No case has been made that such entities have ever practiced government-mandated policies that discriminate against products from foreign sources.

Maintenance of Current U.S. Sanctions

In view of the continuing, legally mandated discrimination against U.S. products in most utilities sectors in the EU, we also believe that the maintenance of limited U.S. sanctions against products from EU member countries that enforce this discrimination is appropriate. The discrimination under Article 36 of the Utilities Directive (as it has recently been renumbered)

works in two basic ways:

- *Mandatory 3 percent penalty.* Every covered European utility must apply a 3 percent price penalty to a bid containing more than 50 percent non-EU product content, if there is a European-source bid of comparable quality and price.
- *Discretionary rejection of non-EU source bids.* Any covered EU utility may disallow any bid in which EU-source products do not equal 50 percent of the total value of products contained in the bid.

The second procedure is particularly devastating for U.S. exporters of competitive products. A non-EC source bid can be summarily rejected at the discretion of the utility. Nor is there any provision that establishes "standing" for a U.S.-source bidder to complain that it was mistreated. However, even the 3 percent penalty provision is highly objectionable, because it applies to all covered utilities, regardless of public or private sector ownership.

As announced by U.S. Trade Representative Michael Kantor before this committee last year, the German government is contesting the mandatory application of Article 36. They claim that it violates independent German commitments to the United States under our existing Treaty of Friendship, Commerce and Navigation. This position is being legally contested by the European Commission, but Germany is currently exempted from retaliatory U.S. sanctions.

Spain, Portugal and Greece are also presently exempted, but only because they are allowed a temporary derogation for two to three years from applying the Utilities Directive in full force. Also, when the four European Economic Area (EEA) countries currently applying for EU membership -- Austria, Finland, Sweden and Norway -- join the EU, they will also be legally required to apply the discrimination in Article 36. Thus, unless future US-EU negotiations are successful in removing this trade barrier, its application could be implemented in seven additional countries.

Application of Article 36 to Private Sector Entities in Europe is Illegal under the GATT

As stated to this committee last year, the NAM believes that this discrimination, insofar as it affects procurement by private sector entities in the European market, is illegal under current GATT rules. Article 3 of the GATT specifically exempts only government procurement from national treatment rules, not the procurement of investor-owned entities operating under government regulations. The Utilities Directive already violates the GATT because it applies to certain named private sector entities. As European governments privatize more utilities entities to alleviate budgetary difficulties and to encourage greater market efficiencies, this violation will grow.

The Public Procurement Agreements Will Be Important to U.S. Manufactured Exports

The trade data in the two tables attached to this testimony indicate how these agreements will aid some of our most important and competitive industrial sectors. *Figure 1* shows the overall distribution of U.S. trade by selected product groups, and *Figure 2* provides the same data with respect to the European Union.

Looking first at the Europe table, we see that while 1993 trade between the United States and Europe was roughly balanced, U.S. exporters had a clear comparative advantage in high technology equipment and other products likely to be important in public procurement. Notably, this included computers and office equipment. Despite two years of slow sales, U.S. exports held a ratio better than 3:1 over imports and the United States had an overall $8 billion surplus. 36 percent of total computer and office equipment exports were shipped to the European Union last year.

The same advantage appears in other product areas in Europe affected by the agreements. For example, U.S.-based companies hold a strong position in the European market in all areas

of the instruments sector -- including controls, scientific and medical instruments. Total U.S. exports are almost $5 billion, almost double imports from Europe, and with a U.S. trade surplus of $2.3 billion. Public authorities covered by the US-EU agreement, including hospitals, local health authorities and public housing authorities are now fully open to U.S.-source bids. Electrical power equipment is included in the category of electrical machinery and parts, and European electrical power utilities are now covered by the bilateral agreement on a permanent basis. In this sector, the United States has a nearly $2 billion surplus with the European Union.

The United States also has a surplus of nearly $2 billion with the EU in telecommunications equipment, and 20 percent of U.S. exports ($2.5 billion) are shipped to the EU despite existing discrimination in Europe. This indicates that further negotiations to open this market, and to eliminate this continuing discrimination would also be important to U.S. trade interests.

While the multilateral public procurement market negotiations also made some progress, they were more limited in outcome than the progress made bilaterally between the United States and the EU. The broadening of covered central government procurement under the GATT Code by all signatories will be helpful, but Canada and Japan did not make adequate offers with respect to coverage of procurement by sub-national entities, and did not receive reciprocal access to the U.S. market in return. Such an expansion of the Code would have helped, for example, our computer exports. Computers are one of our larger exports, at $31 billion in total last year (see Figure 1). But we also have a $12 billion overall deficit. The United States is importing increasing amounts of parts, peripherals and associated business equipment. But in some foreign markets we are often unable to sell complete systems to the public sector institutions at the local and regional level that are an important segment of the market. The same situation is true in many lines of telecommunications equipment.

One definite benefit that we should receive from the new multilateral code is its expansion to central government entities' construction services. The United States has a strong overall competitive position in construction equipment. Opening of the construction market will not only improve access to foreign government entities that buy equipment directly. It will increase exports of U.S. products to construction companies around the world that are hungry for new business.

Mr. Chairman, again I thank you for the invitation to testify, and would be pleased to answer any questions that the Subcommittee may have.

Figure 1:

U.S. Manufactures Trade: TOTAL

All Figures in Billions of Dollars

Product Categories	1992 U.S. Exps	1992 U.S. Imps	1992 Balance	1993 U.S. Exps	1993 U.S. Imps	1993 Balance	Exp. Share (%)
TOTAL TRADE	448.2	532.5	−84.3	464.8	580.5	−115.8	100
ALL MANUFACTURES	368.6	434.3	−65.7	388.5	480.0	−91.5	84
PETROLEUM PRODUCTS	4.3	50.5	−46.2	4.2	50.2	−46.0	1
AGRICULTURAL GOODS	43.0	23.4	19.5	42.7	23.6	19.1	9
CHEMICALS (SITC 5)	44.7	27.7	17.0	45.9	29.2	16.7	10
BASIC MFRS. (6)	38.2	60.4	−22.2	39.2	66.2	−27.0	8
Paper	6.4	8.0	−1.6	6.5	6.6	−0.1	1
Textiles	5.9	7.8	−2.0	6.0	8.4	−2.4	1
Iron and Steel	3.9	9.3	−5.5	3.6	10.1	−6.5	1
Non−Ferrous Metals	5.1	8.5	−3.4	4.7	8.8	−4.1	1
Metal Manufactures	7.3	9.5	−2.2	7.9	10.6	−2.7	2
MACHINERY & TRANS. EQUIPMENT (7)	215.0	232.0	−17.0	224.9	260.0	−35.1	48
Power−Generating Machy.	18.5	15.9	2.5	19.7	17.2	2.5	4
Const. & Special Purpose My.	14.6	9.9	4.6	15.4	11.5	3.9	3
Agricultural Machy. & Tractors	2.7	1.9	0.8	3.0	2.1	0.9	1
Machine Tools	3.1	3.2	−0.0	3.4	3.7	−0.3	1
General Industrial Machinery	18.9	15.5	3.4	20.1	17.1	3.0	4
Computers & Office Machinery	31.0	36.4	−5.4	31.3	43.2	−11.8	7
Non−Consumer Telcom. Equip.	10.4	12.8	−2.4	12.3	14.0	−1.7	3
TV, Radio, VCR, etc.	1.9	13.0	−11.0	2.0	13.3	−11.4	0
Electrical Machinery & Parts	37.4	39.7	−2.3	43.2	46.8	−3.6	9
Motor Vehicles	14.9	46.9	−32.0	15.0	52.5	−37.5	3
Automotive Parts	17.0	16.2	0.8	19.7	18.1	1.7	4
Aircraft & Parts	36.6	7.4	29.2	31.9	6.3	25.5	7
MISC. MANUFACTURES (8)	51.3	95.0	−43.7	54.4	104.5	−50.1	12
Clothing	4.2	31.2	−27.0	5.0	33.8	−28.8	1
Footwear	0.7	10.2	−9.5	0.7	11.2	−10.5	0
Instruments	14.9	7.6	7.3	15.8	8.5	7.4	3
Photo, Optic & Time Equip.	4.3	7.9	−3.6	4.4	8.6	−4.2	1
Toys, Games & Sporting Goods	2.7	10.7	−8.0	3.0	11.6	−8.7	1

Imports customs value.
(This table only: Category export share of all U.S. exports)
Source: NAM from Commerce Department data.

Figure 2:

U.S. MANUFACTURES TRADE WITH THE EUROPEAN UNION

All Figures in Billions of Dollars

Product Categories	1992 U.S. Exps	1992 U.S. Imps	1992 Balance	1993 U.S. Exps	1993 U.S. Imps	1993 Balance	Exp. Share (%)
TOTAL TRADE	102.8	94.1	8.8	97.0	98.0	−1.1	21
ALL MANUFACTURES	87.1	84.1	3.0	83.8	88.0	−4.3	22
CHEMICALS (SITC 5)	12.3	12.1	0.2	11.4	12.3	−0.9	25
BASIC MFRS. (6)	6.4	12.5	−6.1	5.9	13.8	−7.9	15
Paper	0.9	0.8	0.2	0.8	0.9	−0.0	13
Textiles	1.2	1.9	−0.7	1.1	1.9	−0.9	18
Iron and Steel	0.3	2.4	−2.1	0.3	3.1	−2.8	8
Non−Ferrous Metals	0.8	1.2	−0.4	0.7	1.2	−0.5	14
Metal Manufactures	1.1	1.7	−0.6	1.1	1.8	−0.7	14
MACHINERY & TRANS. EQUIPMENT (7)	49.6	41.0	8.6	45.7	42.7	3.0	20
Power−Generating Machy.	5.6	6.8	−1.1	5.4	6.4	−1.0	27
Const. & Special Purpose My.	2.8	4.7	−1.8	2.7	5.2	−2.5	18
Agricultural Machy. & Tractors	0.6	1.0	−0.3	0.7	0.9	−0.2	25
Machine Tools	0.7	0.9	−0.3	0.7	1.0	−0.4	20
General Industrial Machinery	3.4	4.9	−1.5	3.2	5.1	−1.9	16
Computers & Office Machinery	11.9	3.2	8.8	11.3	3.4	7.9	36
Non−Consumer Telcom. Equip.	2.2	0.8	1.4	2.5	0.7	1.8	20
TV, Radio, VCR, etc.	0.1	0.1	0.0	0.1	0.1	0.0	7
Electrical Machinery & Parts	6.8	5.0	1.8	7.4	5.6	1.8	17
Motor Vehicles	2.2	6.6	−4.4	1.6	7.0	−5.4	11
Automotive Parts	1.4	2.1	−0.7	1.6	2.2	−0.6	8
Aircraft & Parts	10.7	4.5	6.2	8.0	4.1	3.9	25
MISC.MANUFACTURES(8)	14.4	13.7	0.6	13.5	14.4	−0.9	25
Clothing	0.5	1.5	−1.0	0.5	1.5	−1.0	10
Footwear	0.2	1.3	−1.1	0.1	1.3	−1.1	21
Instruments	5.0	2.5	2.5	4.9	2.6	2.3	31
Photo, Optic & Time Equip.	1.5	0.7	0.9	1.4	1.7	−0.3	32
Toys, Games & Sporting Goods	0.7	0.5	0.1	0.6	0.5	0.1	21

Imports customs value.
Source: NAM from Commerce Department data.

Mr. CONYERS. Thank you for being our cleanup witness. And we appreciate, as usual, the very good job that you do.

I would like now, to turn the proceedings over to Mr. McCandless who has a few questions of you.

Mr. MCCANDLESS. Yes, we have gone through the process of reviewing the World Trade Organization's language and there are some areas in there that are open to certain interpretations, depending upon where you are coming from and where you are going.

Mr. Mendelowitz, if I am pronouncing it correctly, your thoughts on one particular area, that of the sovereignty aspect of where we are and where other countries are that would allegedly violate such things as labor standards.

Dr. MENDELOWITZ. I think that the sovereignty issue is an extremely important issue for the Congress to consider carefully. If we go back in history, it was the sovereignty issue that led to the still birth of the International Trade Organization envisioned as part of the Bretton Woods system. It is an issue we are looking at and examining closely.

If we were to define at this time an infringement of sovereignty as "the United States being forced to do something that it does not wish to do or does not view in its national interest," I would say that I have seen nothing in the current agreement that would represent an infringement of sovereignty.

With respect to the procedures for amending the agreements under the World Trade Organization, the agreement calls for a supermajority of 75 percent of the nations voting to support any change. If, however, a country does not vote in support of that change, the change is not applicable to that country. So that I think we are covered in that regard.

With respect to dispute settlement, it is true that the dispute settlement procedures will be substantially strengthened. A major complaint with dispute settlement in the past was that one party could block resolution of a dispute and no matter how righteous a complaint was, you could not get satisfaction if the other party to the dispute was unwilling to agree with you.

These strengthening of the dispute settlement procedures represents something that the United States has worked hard for. On a historical basis, we have been a plaintiff in dispute settlement in the GATT more than we have been a defendant. And while the dispute settlement procedures have been strengthened, there is nothing in the new procedures that would force the United States to do something that the United States does not view as in its interest.

The difference, though, is that if we choose not to concur with a resolution of a dispute settlement within the GATT system context, there will be a price to be paid in the sense that the GATT could sanction another party's right to take compensatory action against the United States.

Mr. MCCANDLESS. This new organization that is scheduled to replace GATT if all goes well, the World Trade Organization has been pictured in the minds of some people as being the trade equivalent to the United Nations, where smaller countries who have something in common decide that they want to forward that cause at the expense of the larger countries and that the logic or material value of whatever the subject is, loses its direction in the political

arena. Do have you any comments on that, or any other, gentlemen?

Dr. MENDELOWITZ. I think have you raised an important point, and certainly in the history of the operations of the United Nations during the cold war, the United States was often on the minority side of votes in the General Assembly. I think that where the World Trade Organization would differ in this regard is in a couple of primary areas.

First there is the fact that the system to make any substantial changes requires more than a simple majority; I believe it requires a 75 percent majority. This responds to this problem and trying to adjust the procedures.

And I think second, the issues before the trade organization are not generally symbolic issues or political issues. They are real issues of dollars and cents and business and trade. And because we cannot be forced to do something we don't wish to do, simply having some smaller countries with much less of an economic stake in the system work the system, if I could describe it as such, toward our disadvantage will not force us to do something that we don't think is appropriate.

Mr. MCCANDLESS. I would like to move on to the telecommunications area for Mr. Flanigan and Mr. Cooney's benefit here. I understand that the European people have come up with what they call a green paper that deals with the liberalization of telecommunications, particularly as it relates to mobile telephones and telephone service, voice telephone service and so on and so forth, but that the United States companies may only have limited access to this market once it is liberalized. And the article I read further goes on to say that the feedback mentioned to parties before the commission proceeds to concrete legislative programs. Where are we there?

And to tag on to that a little bit, where did we go wrong in our negotiations with the Europeans relative to telecommunications equipment?

Mr. FLANIGAN. There have been numerous Green Papers issued, could I ask you to describe which Green Paper we are talking about?

Mr. MCCANDLESS. You want me to describe it?

Mr. FLANIGAN. If you could. I am not sure which one you're referring to.

Mr. MCCANDLESS. It comes from a report taken out of the International Trade Reporter on May 5, and the terminology—and I will read that section. "The European commission recommended in a Green Paper adopted April 27th that the European market for mobile telecommunications be completely liberalized."

Does that help you?

Mr. FLANIGAN. Excuse me.

Mr. MCCANDLESS. In the final analysis, that recommendation on the part of the commission somewhat fell on deaf ears.

Mr. FLANIGAN. We are encouraged by what the proposal says and we do believe at this time that U.S. companies will benefit from this. I, myself, must apologize, I am not that familiar with it, being very new to this.

Mr. MCCANDLESS. Maybe Mr. Cooney or one of the others——

Dr. COONEY. I would like to speak a little bit——

Mr. MCCANDLESS. Let me also throw in this——

Dr. COONEY. Well, we have been working with the USTR's office on this issue of United States-European Community negotiations for 6 years at NAM, and so like Ambassador Kantor said, this is a policy that literally goes back two or three administrations. It is not brandnew to him.

I will be honest with you. I don't really think that our negotiators have, "gone wrong." I think the real problem is that there are certain conflicts in Europe. And I think that the Europeans are having difficulties ordering their priorities.

The conflicts are basically indicated by some of the comments I made in these remarks and the remarks of Mr. Mendelowitz. A European report of 1986 indicated that European business pays about twice as much for its telecommunications services as American or Japanese business does. And I think that they have to decide in telecommunications, do they want to protect European jobs or do they want to have efficient, world class, worldwide industries. This subject was not covered in the 1979 GATT agreement because at that time the European Community had no authority over telecommunications. It was outside its competence. The members of the European Community had not agreed to allow the European Community competence over the utilities sectors.

So both the NAM and the U.S. Trade Representative's Office had ambivalent answers, when the European Community internal market program was announced in the mid-1980's, and the earliest proposals in this area had these discriminatory elements. We wanted the European Community to get control over the telecommunications sector so they could discipline national-level discrimination. We first had to get rid of this national discrimination.

Ambivalence continues to run through our response today. Without being thoroughly familiar either with the latest Green Paper, I would say in general we support liberalization of the sector in Europe, because without it, nobody but the current European national providers are going to get anywhere.

I think what happened is that the European Union in coming to its negotiations with the United States said, well, we will open up our market. We will let you participate here with no discrimination, but you have to do the same thing.

And we said, but our market isn't run by the government. I showed them privately and I am sure that other people in the U.S. Government also showed them statistics proving that foreign imports were taking increasing shares of U.S. market in telecommunications equipment.

Their basic response was we want better than normal commercial access. In other words, they want to take our Baby Bells, AT&T—and some of these companies are members of the NAM—and put their private procurement under the GATT rules. And we said, we can't do that. I mean, show us some evidence of discrimination and then maybe you have some case, but they never did.

This went on and on for 3 or 4 years. And finally they gave up on that and they proposed the deal which Ambassador Kantor described a little while ago. They said, OK, we will drop that line. What we will do instead is that you have to give up Buy-American

in other sectors, in surface transportation, Federal highway programs, steel, that sort of thing. No deal could be reached on that basis, nor is the NAM calling for a deal on that basis.

So I think those are the rough outlines, the stages of the negotiation. It is hard, in my view, to see how the USTR's office could have played it better, given, I think, what are some conflicting priorities on the European side. That is really my personal opinion, but we have studied this issue carefully at NAM and reported on it through several different reports and publications.

Dr. MENDELOWITZ. Just because the agreement is imperfect doesn't mean that something objectively went wrong. In each case, both on the part of the United States and on the part of the Europeans, you can array the industries and the agencies and the entities under consideration from those that were least sensitive to those that were most sensitive. And, basically, the Europeans placed their telecommunications industry in the category of most sensitive. On the U.S. side, the category of areas that we felt were most sensitive dealt with mass transit, surface transportation, and a few others. And, in fact, what the Europeans said was we will give you our most sensitive sector if you give us your most sensitive sectors. We felt that we couldn't do that.

I don't think that the Europeans made the offer seriously. I don't think they believed that by telling us that they would give us telecommunications in exchange for something that they knew that we could not deliver was a serious offer. It is a reflection of the fact that European Union and the United States were out there negotiating on the sectors that are the most sensitive for a variety of reasons to each party.

Dr. COONEY. That was an excellent comment. And I want to add one further point to it. I think this is a case where history is on our side. I think if you look at the balance now, as do I in this paper, for example, last year, you take out TVs and VCRs and so on and just look at telecommunications equipment trade between the United States and Europe, it is 4-to-1 in our favor 2.5 billion exports to 700 million imports. We have a huge surplus with the Europeans in this area.

It is clear that our companies have very competitive equipment to sell. And there are some European companies that operate here and have competitive equipment that they do sell in our market and we are pleased to have them here.

As liberalization moves forward in Europe, what we are counting on is that there will be increasing market pressure in Europe to use the best equipment. In many cases that will be not only equipment of U.S. companies, but equipment made in the United States, and not only the equipment of the very large companies, but as indicated by some calls recorded at NAM, products of small companies, too.

Mr. MCCANDLESS. I have one more quick one, Mr. Chairman, I always have one more quick one.

In my opening statement I talked about how are we going to address the reduction in revenues from tariffs, and of course our budget procedure says you either cut spending or you increase taxes. And there is an alternate being offered that the offsets from the increased trade and revenues generates from increased trade

through taxes and other means, would be an excellent way of taking care of whatever they are talking about. One of the figures floating around is $13 billion. Is that something, Dr. Mendelowitz, that would be feasible? What are your thoughts on that?

Dr. MENDELOWITZ. You are asking a question that relates to one of the most arcane areas that we have, and that is budgeting and the application of the pay-as-you-go requirement.

The issue of how one pays for the revenue loss associated with the GATT agreement really is fundamentally, I believe, something in the purview of the Congress. And I think as a representative of the GAO, I would be overstepping my bounds if I were to tell the Congress how to cut spending or raise money to pay for the agreement. My personal observation is that it would be lamentable, though, if this agreement had difficulty getting approved because of the requirements of the pay-as-you-go provisions. I do believe that the economic assessments indicate that there should be a significant stimulus to the economy from the agreement. If these assessments prove correct, there will be an increase in tax revenue.

How much that will be, I just couldn't say, but it is reasonable to expect it could easily overwhelm the numbers involved in the foregone tariffs. Unfortunately, under the current rules of pay-as-you-go, any tax revenues associated with macro stimulus don't count, and I think really it is an issue—for the Congress to decide exactly how it is going to apply these pay-as-you-go rules.

Mr. MCCANDLESS. We have come up with estimates of the loss of revenue from tariffs. Is it possible to come up with estimates that are reasonably accurate of revenues gained as a result of the increased trade and activity?

Dr. MENDELOWITZ. I don't think you can come up with precise estimates, but I think that the CBO should be able to come up with reasonable ballpark estimates. In the sense that I think they should be able to do an analysis which would indicate, in a ballpark sense, the increased revenues from greater macroeconomic activity stimulated by the agreement which would, in fact, offset the loss in tariff revenues.

Dr. COONEY. Well, I would just say I didn't come prepared to discuss this today; it is not my specialty at NAM. But we have certainly looked into the more dynamic approach and think that it is a preferable one to the approach used now.

I would also say that, and probably Allan would agree with me here, that there is no evidence in economic literature that static analysis necessarily gives you a better forecast than dynamic analysis I am talking about a dynamic analysis of trade which assumes that there are feedbacks and so forth. It is harder to do, but it is not necessarily less accurate.

Mr. MCCANDLESS. Thank you, Mr. Chairman.

Mr. CONYERS. Thank you, Representative McCandless. You raised an issue that we will be returning to no doubt in the Congress.

Mr. Flanigan, Dr. Cooney, Dr. Mendelowitz, thank you very much. There may be some questions coming to you for you to supply in writing. And without objection, the statement of Mrs. Maloney of New York will be included in the record.

[The prepared statement of Mrs. Maloney follows:]

CAROLYN B. MALONEY
14TH DISTRICT, NEW YORK

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

COMMITTEE ON GOVERNMENT OPERATIONS

CONGRESSIONAL CAUCUS ON WOMEN'S ISSUES
EXECUTIVE COMMITTEE

CONGRESSIONAL ARTS CAUCUS
EXECUTIVE COMMITTEE

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REP. CAROLYN MALONEY -- OPENING STATEMENT
HEARING ON INTERNATIONAL PROCUREMENT AND GATT

MAY 18, 1994

Thank you Mr. Chairman and welcome Mr. Kantor. It is a pleasure to see you hear today; you are to be commended for all of your diligent work on behalf of this country. Welcome as well to our other witnesses.

The efforts to renegotiate the Code on Government Procurement, held under the auspices of the Uruguay Round of GATT, were concluded on April 15th of this year. The new Code would expand the scope and coverage of the treaty and attempt to further eliminate discrimination in government purchasing.

This agreement could prove an enormous benefit to US producers. But it presents problems as well. Eliminating discrimination in government purchasing could open up a global procurement market of potentially astronomical proportions -- valued at hundreds of billions of dollars. At the same time, opening up the US procurement market and waiving our Buy American Act preferences could expose US firms to competition from cheaper foreign goods and cost American jobs.

We are presented here with a familiar dilemma -- are the potential gains from freer procurement regulation outweighed by the short-term losses? This question must be addressed in the light of what some would call lax foreign adherence to the current code and also the greater benefits available to foreign countries, given the relative size of the US procurement market.

I am sure that our witnesses will address these and other questions and I look forward to hearing their responses.

Thank you Mr. Chairman.

Mr. CONYERS. The subcommittee now stands adjourned.

[Whereupon, at 11:46 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

JUN 20 1994

The Honorable John Conyers, Jr.
U.S. House of Representatives
Washington, DC 20515-6143

Dear Congressman Conyers:

Thank you for your letter of May 24. I was pleased to appear before the Subcommittee on Legislation and National Security to discuss foreign government procurement. Attached you will find answers to the questions you submitted with your letter. I trust that they will give you and the other Subcommittee members a fuller understanding of this important issue.

Sincerely,

Michael Kantor

ANSWERS TO CHAIRMAN CONYERS' QUESTIONS

I. COVERAGE OF STATE PROCUREMENT MARKETS

1. **A principal achievement under the new Code is the inclusion of subcentral government procurement. This includes covered entities in 37 U.S. states as well as a few port authorities.**

   -- Through what process will the U.S. Government obligate state governments to Code procedures? How does this effect State sovereignty and the separation of powers?

   -- What happens if a state opts to pull out? What will be the responsibility of the U.S. Government to other Code countries?

   -- I thought the goal of expanding Code coverage to states was to open up the EU telecom market. What happened?

   -- Have any states raised questions since then about the final deal the U.S. has made?

   -- What is the comparative access the U.S. has gained in EU markets?

Answer:

When Congress approves the Government Procurement Code as part of the Uruguay Round implementing legislation, it becomes part of U.S. domestic law and the obligations undertaken by the states, as reflected in the U.S. schedule to the Code, also become part of domestic law. Obviously, we will depend on each state's implementation of its individual commitment to ensure U.S. compliance with the new Code. The Federal government did not unilaterally preempt any state. Each state government covered under the new Code made its own decision to be part of that agreement.

If a state chooses to pull out at a later date, the United States may owe compensation to other signatory countries or face the possibility of these countries making retaliatory withdrawals in their coverage. Ultimately, however, we hope to avoid this by working closely with the states to assist them in implementation and effectively representing their interests in the new Code.

As to the goal of opening the EU telecom market, we are disappointed that we could not reach an agreement in April in Marrakech but remain determined to press on in seeking an agreement. We sought commitments from states in order to reach a comprehensive agreement on government procurement in all areas, including subcentral governments and government-owned utilities. While our agreement with the EU in April does not include telecom, it is very substantial and certainly in the interests of

U.S. industry overall. The EU tied agreement on telecom in April to complete removal of Buy America restrictions attached to Federal funds on mass transit, highways, airports and waste water projects. We were not willing to lift restrictions in these important, but unrelated, areas for a telecom agreement, particularly since our telecom market is completely open. A telecom agreement is designed to ensure reciprocal access in the EU and U.S. telecom markets.

Since we struck the agreement with the EU and concluded the new Code, we have informed states of the various elements of the package and started to work closely with them on implementation issues. Some states have expressed their desire that covered states treat suppliers from other covered states no less favorably than suppliers from Code signatory countries. We continue to work with the states to address this issue to their satisfaction.

Under the U.S.-EU agreement, the EU will be covering under the Code more than $100 billion in procurement opportunities by central governments, subcentral governments and government-owned utilities. The value of U.S. coverage under the agreement is roughly equivalent, although only approximately $80 billion will be covered under the Code. Another $20 billion in the agreement has been credited to the U.S. investor-owned electrical utilities, which are already open to EU firms. These values have been developed by the independent consulting firm of Deloitte Touche.

II. SANCTIONS AGAINST THE EUROPEAN UNION

2. Last year we imposed sanctions against the EU under Title VII for their discrimination in telecommunications. However, this does not appear to have been very effective.

-- What purpose have sanctions served in working to bring an end to discrimination in this market?

-- What has been the commercial impact of the EU's counter-sanctions?

-- What other retaliatory options are available to us?

Answer:

The Title VII sanctions have not ended the EU discrimination on telecom but they have limited EU firms selling in the U.S. Federal procurement market. It appears that EU firms have been precluded from bidding on contracts in which they have shown some interest.

The commercial impact of the EU counter-sanctions appears to have been minimal, and we have not heard from U.S. firms that they

have been precluded from bidding on EU contracts due to the sanctions.

The Administration has already utilized the full value of sanctions on civilian procurement provided for under Title VII without violating our obligations under the existing GATT Government Procurement Code and the U.S.-EU MOU on Government Procurement of May 1993. As part of our broader effort to develop post-Uruguay Round negotiating options, we are currently assessing whether there are any additional steps in other areas that may be effective in ending EU discrimination on telecom.

3. **Last year, AT&T recommended that we consider a tougher approach, for example the termination of Department of Defense MOUs for open purchasing from countries that discriminate against U.S. telecom products.**

   -- How do you respond to this recommendation?

   -- What suggestions does the industry offer now that we have a Code which excludes coverage of this significant sector?

   -- At what point do we take more aggressive action to resolve the access problem?

Answer:

The Defense MOUs were negotiated primarily with national security objectives in mind to ensure compatibility in defense systems among our allies. The Department of Defense is responsible for administering them. From a purely trade perspective, U.S. exporters have access to foreign military procurement markets under the MOUs, an area where the United States consistently runs a trade surplus.

As to next steps on telecom, we will continue to work closely with the industry on reengaging the EU on telecom negotiations. We understand that the telecom industry is developing ideas, as is the Administration. A telecom procurement agreement remains a high priority in U.S. trade policy.

III. PAY-AS-YOU-GO

4. **The Uruguay Round of the GATT is projected to produce revenue losses of $12 billion due to reductions in tariffs on imports. Under the terms of the Budget Enforcement Act, these losses must be offset to maintain "deficit neutrality".**

   -- What options do we have to offset the estimated revenue shortfall?

Answer:

The Office of Management and Budget and the Department of the Treasury are currently reviewing options to offset the revenue losses due to the lowering of U.S. tariffs. However, no decisions have been made, nor will they be made without full consultation with the Congress. With full Congressional consultation, we are confident we will find a viable, bipartisan funding package.

5. **Although the Administration estimates losses over the first five years, revenue gains of $1 trillion are projected over ten years of the Round's phase-in. My Republican colleague, Rep. David Drier, suggests that if GATT will work ultimately to lower the deficit, we should not hinder its implementation with budget rules intended to block bills that raise the deficit.**

   -- What is your reaction to this suggestion?

   -- Should we consider a waiver of the Budget Enforcement Act for the first five years?

Answer:

While it is likely that over time net Federal revenues will increase, the Budget Enforcement Act requires that OMB and CBO use the technical and economic assumptions used in the preparation of their estimates when scoring legislation. This means that the future, indirect impact of legislation (i.e., improved economic growth resulting from trade agreements) may not be calculated as a part of the estimate.

The Clinton Administration has made great efforts to maintain fiscal discipline. As a result, we are committed to abiding by the budget rules that exist today and thus committed to offsetting revenue reductions for the first five years.

IV. <u>PROTECTION OF MINORITY PREFERENCE PROGRAMS</u>

6. **The Code does not clearly preserve Federal, state and local procurement laws designed to foster minority and female-owned business enterprises, and Black and Hispanic colleges and universities.**

   -- By what process will the U.S. Government protect these important procurement laws?

   -- Do you see increased opportunities for minority enterprises in foreign procurement markets?

   -- Will we provide any assistance to small and minority businesses to enable them to compete in global

procurement markets? If so, what agency will manage this program?

Answer:

In fact the U.S. schedule does protect these programs. At the Federal level, we have an exception for small and minority-owned business set asides. This exception is identical to that taken in the NAFTA. As noted in the NAFTA Statement of Administrative Action, the exception covers all preference programs for minority and women-owned businesses, among others. The Statement of Administrative Action will contain an identical provision. In addition, at the state level, we have even broadened the exception to apply to all programs with socio-economic objectives.

We believe that the increased value of procurement at all levels of government covered by other countries under the Code presents tremendous export opportunities for all U.S. firms, including minority-owned firms. The increased transparency that is required by the Code's procedures will make it much easier for these firms to bid in an open and predictable competitive environment.

As to assistance to small and minority businesses, the Commerce Department maintains an electronic bulletin board, which reports daily on foreign procurement opportunities and was specifically designed for U.S. firms that have relatively few resources to track foreign procurements and other export opportunities. The opportunities announced on the bulletin board will grow with implementation of the new Code.

V. DISCRIMINATION IN JAPANESE MARKETS

7. The Title VII Report suggests that we are stalling in our identification of Japan for 60 days in anticipation of the resumption of the Framework discussions.

-- Given that Title VII identification provides 60 days for consultations, wouldn't naming Japan at this time encourage a resumption of talks?

-- What leverage do we have to bring Japan to the table for Framework talks?

Answer:

The Title VII announcement on April 30 came at a critical juncture in U.S.-Japan relations when identification could have set back attempts to relaunch the Framework discussions. Since the announcement and the hearing before your Subcommittee, the United States and Japan in fact have reached agreement to resume the Framework negotiations, and sectoral negotiations on telecom and medical technology have resumed this week in Tokyo. A

decision under Title VII on these two sectors will be made by June 30, as noted in the Title VII report.

8. In the Report, the Administration acknowledges that Japan still practices discrimination in the procurement of supercomputers.

-- What have been our achievements under the bilateral Supercomputer Agreement?

-- What have been your most effective tools in achieving this access?

-- Now that we have a Code Agreement, what is our outlook for progress in opening Japan's procurement markets?

Answer:

While we have some serious concerns about remaining discrimination in the Japanese supercomputer procurement market and are continuing the Section 306 review indefinitely, six of 15 contracts awarded in 1993 went to U.S. bidders.

Clearly, U.S. scrutiny of Japanese practices in this sector under Title VII and Section 306 have helped to raise the visibility of our concerns. Also we believe that we are making progress under the Supercomputer Agreement.

With respect to the new Code Agreement, we believe that it gives us excellent leverage to ensure that we obtain open Japanese procurement markets on a fully reciprocal basis. Certainly the new disciplines in the new Code, including the requirement on bid challenge, will help in opening Japan's procurement markets.

VI. <u>IMPLEMENTATION OF CODE</u>

9. Since the Government Procurement Code was not originally negotiated as a legal part of the Uruguay Round, how will implementation of these agreements be considered in the Congress?

Answer:

Despite the fact that the Code negotiations were technically separate from Uruguay Round negotiations, the new Code is an Annex 4 agreement in the WTO Agreement concluded in Marrakech. As part of the WTO Agreement, Code implementing legislation will be included in the overall WTO implementing legislation.

10. If we are unable to reach a satisfactory agreement on government procurement, what will this mean for implementation of the GATT?

Answer:

We believe we have reached an historic new Code Agreement, which will be implemented under the WTO umbrella. The sheer size and breadth of the new Code should be viewed as a significant selling point for the entire WTO Agreement.

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

June 9, 1994

The Honorable John Conyers
Chairman, Subcommittee on Legislation
and National Security
Committee on Government Operations
House of Representatives

Dear Mr. Conyers:

Attached are my responses to your follow-up questions for the record to the May 19 hearing on international procurement, the results of the GATT Uruguay Round negotiations and USTR's title VII report on foreign government procurement discrimination.

If you have any additional questions I may be contacted on (202) 512-4812.

Thank you again for the opportunity to testify before your subcommittee.

Sincerely yours,

Allan I. Mendelowitz, Managing Director
International Trade, Finance
and Competitiveness

Follow-up questions to GAO testimony International Trade: Efforts to Open Foreign Procurement Markets (GAO/T-GGD-94-155, May 19, 1994).

I. COVERAGE OF STATE PROCUREMENT MARKETS

1. A principal achievement under the new Code is U.S. coverage of entities in 37 U.S. states.

--In your opinion, will the U.S. Government be able to effectively obligate States to conform to Code procedures? What are the implications for State sovereignty and the separation of powers?

--What happens if a State opts to pull out? What will be the responsibility of the U.S. Government to other Code countries?

In testimony, GAO discussed concerns we heard about how to "effectively obligate" state-level code commitments to other code signatories yet maintain their voluntary nature. USTR officials told us that specific legislation is not needed and that overall congressional approval of the GATT Uruguay Round agreement would secure state commitments. Any effects on states' sovereignty will depend on how the legal mechanisms proposed in USTR's draft implementing legislation and adopted in the final act balance these concerns. GAO has not yet seen any draft implementing legislation from USTR; however, we understand that draft implementing legislation would generally provide that no state law or its application could be declared invalid on the grounds that the provision or application is inconsistent with the Uruguay Round agreement except in an action brought by the federal government.

Regardless of how these important domestic legal concerns are resolved, there still remains the issue of how well federal and state officials implement the new agreement in the eyes of the other signatories. That is, if other signatories are not satisfied that the United States has fulfilled its commitments--or if state commitments were withdrawn, then USTR would probably have to negotiate some form of compensation (such as opening other opportunities) and/or face action under the agreement's dispute settlement process if other signatories pursued the issue.

In any event, it is clear that consultations between USTR, Congress, and the states will be essential in order to choose an acceptable domestic legal mechanism to avoid any future conflicts, if the new agreement is implemented.

II. SANCTIONS AGAINST THE EUROPEAN UNION

2. Last year, TIA's president called the sanctions against the EU "less than a slap on the wrist."

--Has the implementation of Title VII proven at all effective in redressing discrimination in this sector?

--What other approaches should we consider in order to bring about access to the EU's telecommunications market?

We have not assessed the role of title VII in recent U.S.-EU negotiations. However, in our testimony we observed that in May 1993 USTR imposed title VII sanctions against the EU valued at $20 million-$25 million after it found discrimination in the EU's government

telecommunications market valued at $15 billion annually. The EU responded to the U.S. sanctions by imposing sanctions against the United States valued at $15 million. These title VII sanctions were in place during the final bilateral negotiations that offered billions of new U.S. opportunities to the EU. Nevertheless, telecommunications was not included in the final agreement. At this time, it is unclear what other approaches are possible for USTR toward the EU for telecommunications besides finding new incentives to offer or additional sanctions to impose. The authority under title VII remains an important instrument for the later option.

3. Last year, AT&T recommended that we consider termination of Department of Defense MOU's for open purchasing from countries that discriminate against U.S. telecommunications products.
--How do you respond to this recommendation?
--What suggestions does the U.S. telecommunications industry offer now that we have a Code which excludes coverage of this significant sector?
--At what point do we take more aggressive action to resolve the access problem?

In International Government Procurement Issues (GAO/T-NSIAD-89-50, Sept. 27, 1989) we testified before this committee that DOD Memoranda of Understanding (MOU) covered about 80 percent of total U.S. government procurement. Although some of this procurement is also covered by the code, non-code-covered DOD procurement represents a significant market and could provide substantial leverage.

In this regard, Congress has recognized that access to DOD procurement can be used as a sanction under title VII; the conference report accompanying title VII (H. Rept. 100-576, Apr. 20, 1988) stated that the conferees intended that "the Secretary of Defense and the United States Trade Representative consult with one another to determine methods for achieving greater cooperation between them for the purpose of promoting increased reciprocity for U.S. suppliers seeking access to the government procurement markets of foreign countries participating in Department of Defense Memorandum of Understanding Programs."

However, using this technique raises other important policy considerations. As we reported in International Procurement: Problems Identifying Foreign Discrimination Against U.S. Companies (GAO/NSIAD-90-127, Apr. 5, 1990) the principal objective of the MOUs is to enhance military readiness and armaments cooperation. DOD officials believed that the MOUs had been successful in maintaining U.S. access to foreign defense markets by increasing foreign access to the U.S. market. Because defense objectives could be jeopardized, DOD opposed linking these agreements to nondefense goals in achieving market access.[1] In 1990, this committee considered legislation that would have more clearly coordinated defense trade policy with overall U.S. trade policy and potentially used access to

[1]However, in European Initiatives: Implications for U.S. Defense Trade and Cooperation (GAO/NSIAD-91-167, Apr. 4, 1991) we reported that some government and industry observers questioned the continued usefulness of these MOUs in achieving our defense goals.

DOD MOU-covered procurement as leverage to achieve U.S. trade negotiating objectives. Although MOUs had commercial consequences and provided for reciprocal market access, they were not treated as trade agreements and were almost solely the responsibility of DOD.

GAO has not done any more recent work on this particular issue and has not had any discussions with the telecommunications industry about new strategies to open foreign procurement markets.

4. In written testimony, TIA said they may oppose the Agreement because it fails to cover their industry.
--What is your response to this testimony?
--How do you envision this affecting Congressional approval of the Code?

Since the original agreement in 1979, coverage of telecommunications was a major U.S. objective in the code negotiations; its exclusion from the new agreement is a major disappointment for a large and competitive U.S. industry.

The new agreement traded greater U.S. access to foreign procurement opportunities for greater foreign access to U.S. procurement opportunities. The decision to approve the code is a congressional prerogative. Members of Congress will have to weigh the expected costs and benefits of the agreement as a whole in making their judgements. Specifically, the significance of not gaining access to the EU's $15 billion telecommunications market, will have to be weighed against the value of gaining access to over $100 billion in EU opportunities.

III. DISCRIMINATION IN OTHER PROCUREMENT MARKETS

5. Although only the EU is formally identified, the Title VII Report acknowledges that discrimination exists in other foreign procurement markets. These markets are instead labeled "markets of concern."
--You are acquainted with the criteria stipulated in the Title VII statue. Do you feel that any other markets merited formal identification under the Law?

GAO has not done any independent assessment of foreign procurement markets nor has GAO reviewed the evidence that USTR compiled during its investigation. However, in our testimony we point out that USTR's strategy, used by previous administrations, has been to give priority to negotiating access to foreign procurement markets before officially identifying countries under the statue. We then outlined the history of USTR's formally identifying countries under title VII and also for providing information on other markets of concern. In 1990, this committee held hearings about USTR's failure to formally identify countries under title VII, despite having provided information on specific discriminatory procurement practices. At the time, USTR responded that it believed the law gave it discretion as to whether to formally identify countries, and that doing so would have jeopardized ongoing negotiations. The committee issued a investigatory report (H. Rept. 101-989, Nov. 29, 1990) that found this interpretation was "contrary to the intent of title VII...." and considered

legislation to amend title VII accordingly. We understand that this issue arose in subsequent annual oversight hearings.

(No question 6)
7. The administration intends to defer naming Japan under the statute for 60 days in anticipation of the resumption of the Framework discussions.
--Is this an effective approach to addressing Japan's discrimination in telecommunications and medical technology.
--What leverage do we have to bring Japan to the table for Framework talks?

The title VII report indicated that this approach was based on consideration of internal Japanese issues. USTR has used a similar tactic before with regard to the EU in 1992 for its heavy electrical and telecommunications procurement markets; results were mixed. In 1991, USTR did not formally identify the EU under title VII, but announced an "early review" to be conducted 1 month after an agreed target date for concluding ongoing negotiations. In 1992, USTR named the EU after this early review but deferred implementing sanctions while Uruguay Round negotiations were in progress. While this tactic eventually led to a bilateral agreement on heavy electrical equipment, it did not eventually result in an agreement covering telecommunications, as you are aware.

The greatest leverage the United States has over Japan is the fact that the two economies are so interdependent. While Japan has had great economic growth, this has not been fully reflected in changes to the Japanese standard of living. The framework talks are expected to address issues that are in the long run economic interests of Japanese consumers. Hopefully, this realization will be a factor in convincing Japanese negotiators to be more forthcoming in the talks.

IV. FUTURE UTILITY OF TITLE VII

(no number)
--How do you assess the overall effectiveness of Title VII in opening closed procurement markets?
--Can the statute be more useful? In what way?
--Now that we have a Code Agreement, what do you perceive to be the future role of Title VII?
--What is our outlook for progress in opening non-Code country procurement markets?

USTR has been effective in opening certain Japanese, European, and Norwegian markets after using the title VII process. However, the effectiveness of title VII goes beyond USTR's formally identifying and sometimes sanctioning countries. As we said in our testimony, title VII and the committee's annual oversight hearings have helped focus USTR's attention on international procurement issues. They also signaled to other countries that there was serious congressional concern about their failure to open their procurement markets to U.S. goods and services.

Historically, only more developed economies having established procurement systems were able to undertake the responsibilities of code membership, including implementing all the required procedures. Only a few new countries have joined the code since it was established in 1979. Over the years code signatories have considered how best to help developing countries join the code, but during the Uruguay Round the focus has been on broadening coverage of the existing signatories.

In the past, USTR's strategy has been focused on Uruguay Round negotiations. Hopefully, improvements to the code, such as local bid challenge provisions, will reduce the need to use title VII to help resolve disputes over code compliance in the future. Title VII will remain at USTR's disposal as an important instrument to encourage code signatories to offer uncovered markets, like telecommunications and transportation, to add to their coverage and to initiate negotiations with nonsignatory countries about joining the code; USTR has said that Australia, China, and Taiwan are priority countries for future procurement negotiations. Some future procurement agreements may be bilateral (outside of the code) until the other country seeks accession to GATT. The NAFTA agreement's coverage of Mexican procurement is an example of this approach.

end

Mr. Matthew Flanigan - TIA

I. **COVERAGE OF STATE PROCUREMENT MARKETS**

1. **A principal achievement under the new Code U.S. coverage of entities in 37 U.S. States.**

   -- Wasn't the support of your sector for inclusion of States predicated on access to the EU telecom market. What happened?

II. **SANCTIONS AGAINST THE EUROPEAN UNION**

2. **Mr. Flanigan, your predecessor called last year's sanctions against the EU "less than a slap on the wrist".**

   -- Has the implementation of Title VII proven at all effective in redressing discrimination in this sector?

   -- What other approaches should we consider in order to bring about access to the EU's telecom market?

3. **Last year, AT&T recommended that we consider termination of Department of Defense MOU's for open purchasing from countries that discriminate against U.S. telecom products.**

   -- How do you respond to this recommendation?

   -- What suggestions does the U.S. telecom industry offer now that we have a Code which excludes coverage of this significant sector?

   -- At what point do we take more aggressive action to resolve the access problem?

4. **In your written testimony, you indicated that TIA may oppose the Agreement because it fails to cover their industry.**

   -- How do you envision this effecting Congressional approval of the Code?

III. **DISCRIMINATION IN OTHER PROCUREMENT MARKETS**

5. **Although only the EU is formally identified, the Title VII Report acknowledges that discrimination exists in other foreign procurement markets. These markets are instead labeled "markets of concern".**

   -- You are acquainted with the criteria stipulated in the Title VII statute. Do you feel that any other markets merited formal identification under the law?

7. **The Administration intends to defer naming Japan under the statute for 60 days in anticipation of the resumption of the Framework discussions.**

   -- Is this an effective approach to addressing Japan's discrimination in telecom and medical technology?

   -- What leverage do we have to bring Japan to the table for Framework talks?

IV. **FUTURE UTILITY OF TITLE VII**

   -- How do you assess the overall effectiveness of Title VII in opening closed procurement markets?

   -- Can the statute be more useful? In what way?

   -- Now that we have a Code Agreement, what do you perceive to be the future role of Title VII?

   -- What is our outlook for progress in opening non-Code country procurement markets?

Matthew J Flanigan
President
202/457-4934

TELECOMMUNICATIONS INDUSTRY ASSOCIATION

July 6, 1994

Honorable John Conyers
Committee on Government Operations
Subcommittee on Legislation and National Security
U.S. House of Representatives
2167 Rayburn House Office Building
Washington, D.C. 20515-6143

RE: Responses to Additional Questions Related to the Hearing on the GATT Government Procurement Code

Dear Representative Conyers:

Thank you very much for the opportunity to present our views on an area of critical importance to TIA and to our member companies. Market access for telecommunications government procurement is one of the key issues facing our industry.

Responses to your additional questions will be tailored to the questions as sent to us.

Question I.1.

From our perspective you are accurate in your assessment of why the States were so important to bring on board. I am not exactly sure why USTR gave the EU coverage of the States but did not get telecommunications, but, my surmise is that the joint study done by the U.S. and EU on total potential procurement opportunities pointed to an unbalanced picture, and that USTR ultimately believed they needed to give the EU the States in order to get the deal they got. The EU was apparently very concerned about the optics from the EU Member States perspective of concluding a deal that appeared unbalanced and refused to give in on telecommunications.

Question II.2.

I believe that the Title VII sanctions against the EU announced in 1993 were minimal and did not encourage the EU to negotiate in good faith. I gather they have caused some "pain" to EU suppliers, but generally have been insignificant.

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Other avenues to pursue might be tying in new market opportunities that EU companies want in the U.S. with a resolution of the procurement matter. One thought would be to condition U.S. government approval of France Telecom and Deutsche Telekom's interest in purchasing 20 percent of Sprint with the EU procurement matter.

Question II.3.

I believe AT&T's recommendation regarding Department of Defense MOUs has merit and is worthy of careful consideration.

Related to the Code, TIA has in the past recommended that USTR evaluate the consequences of the U.S. withdrawing from the Code. While I recognize this is a rather drastic step, TIA believes our industry has been helped rather little by the Code and would like to send a strong message to the EU on the matter.

Regarding timing and strategy, I believe that after the next couple of discussions between the U.S. and the EU, U.S. negotiators should be in a better position to assess whether the EU is serious about resolving this issue or not. If the EU is not serious then the U.S. should be prepared to act more aggressively.

Question II.4.

First, let me update you on TIA's position. Since the hearing, we polled our members and TIA's position is that we support the overall Uruguay Round but oppose the Government Procurement Code Agreement.

In terms of the legislative impact, I am a bit unclear how much of the Code agreement requires legislative action. I have been told that most of the agreement can be accomplished through an Executive Order.

Question III.5.

While it is true that there are telecommunications government procurement market access problems in a number of countries including Japan, Brazil and others, I believe it may not be the appropriate time to name these countries under Title VII. However, we will be monitoring the situations closely and may change our views in the future.

Question III.7.

Regarding naming Japan under Title VII, we believe that because significant enough progress is being made on the issues of concern to TIA and given the political flux in Japan at the moment, TIA does not oppose USTR's deferment of naming Japan under Title VII.

Generally speaking, the ultimate leverage that USTR has is access to the U.S. market. This could ultimately be in the form of Title VII, Section 301 or other trade actions. Specifically with respect to NTT, there are some specific actions the Japanese would like to see to modify the 1981 NTT Agreement. This gives us some specific leverage related to NTT procurement.

Question IV.

We believe Title VII and your Committee's oversight responsibilities are very helpful. They provide a very good forum to alert responsive Representatives such as yourself to market access problems that industry faces. Furthermore, if used properly, Title VII gives USTR ammunition and leverage to open closed markets. Perhaps the statute could be made more useful by encouraging more aggressive action on the part of USTR in its implementation. In terms of the future of Title VII, I believe it will continue to play a useful role. In terms of non-Code countries, USTR must look to other means for increasing market access. With telecommunications specifically, it is very useful to have other relevant agencies, i.e., FCC, NTIA, State/CIP engage non-Code countries in a way that encourages those countries that it is in their best interest to stimulate competition and open markets.

Please let me know if any additional information is required.

Sincerely,

Matthew J. Flanigan

NAM National Association of Manufacturers

Stephen L. Cooney, Jr.
Senior Policy Director
International Investment & Finance

June 13, 1994

The Honorable John Conyers, Jr.
Chairman, Committee on Government Operations
2157 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the National Association of Manufacturers, I am pleased to enclose my answers to the additional questions asked in your letter of May 24, 1994, on the subject of recent U.S. international agreements pertaining to government procurement.

Once again, it was a pleasure to testify before your committee on this subject last month. The NAM and I would be most willing to provide any further information on our views on this issue, which we believe is critical to future U.S. export prospects and to our overall competitiveness.

Yours sincerely,

Stephen Cooney

Enclosure

Dr. Steve Cooney - NAM

I. COVERAGE OF STATE PROCUREMENT MARKETS

1. A principal achievement under the new Code U.S. coverage of entities in 37 U.S. States.

-- Wasn't the support of telecom for inclusion of States predicated on access to the EU telecom market. What happened?

II. SANCTIONS AGAINST THE EUROPEAN UNION

2. Mr. Flanigan's predecessor called last year's sanctions against the EU "less than a slap on the wrist".

-- Has the implementation of Title VII proven at all effective in redressing discrimination in this sector?

-- What other approaches should we consider in order to bring about access to the EU's telecom market?

3. Last year, AT&T recommended that we consider termination of Department of Defense MOU's for open purchasing from countries that discriminate against U.S. telecom products.

-- How do you respond to this recommendation?

-- What suggestions does the U.S. telecom industry offer now that we have a Code which excludes coverage of this significant sector?

-- At what point do we take more aggressive action to resolve the access problem?

4. In written testimony, TIA indicated that they may oppose the Agreement because it fails to cover their industry.

-- How do you respond to this testimony?

-- How do you envision this effecting Congressional approval of the Code?

III. DISCRIMINATION IN OTHER PROCUREMENT MARKETS

5. Although only the EU is formally identified, the Title VII Report acknowledges that discrimination exists in other foreign procurement markets. These markets are instead labeled "markets of concern".

-- You are acquainted with the criteria stipulated in the Title VII statute. Do you feel that any other markets merited formal identification under the law?

7. **The Administration intends to defer naming Japan under the statute for 60 days in anticipation of the resumption of the Framework discussions.**

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NAM RESPONSES TO ADDITIONAL QUESTIONS ON GOVERNMENT PROCUREMENT CODE ISSUE

Ques. **NAM Response:**

1) A wide range of companies supported inclusion of U.S. state and local government procurement in an expanded GATT Government Procurement Code. Our expectation was that the U.S. government would not offer such procurement, unless equivalent access were forthcoming from our trading partners. The European Union did provide equivalent access at the "subnational" level. We did not receive equivalent access to state, provincial or local procurement in Japan or Canada. Therefore, the final agreement on subnational procurement only opens U.S. access at this level to European products, and those of certain other countries.

With respect to the US-EU negotiations on telecommunications, the EU negotiators said in their final offer that they would only lift present discriminatory EU rules, if the United States would commit itself to removal of "Buy-America" provisions in federally funded highway, mass transit and clean water programs. Both the U.S. and EU negotiators said in their public statements that no deal could be agreed on these terms.

Some telecommunications equipment manufacturing companies played very active and effective roles in encouraging state and local governments to include their procurement under GATT rules. We all knew that no broad deal, including U.S. non-discriminatory access to foreign telecommunications utilities, could possibly be reached without an agreement covering government procurement at the subnational level. The NAM therefore views the opening of subnational procurement under the code as a positive development, but we remain concerned that a different area, non-discriminatory access to European telecommunications entities, was not finally included under this package.

Our interpretation is that the European Union itself could not reach an internal conclusion, as to whether it is more important to its industry overall that it create a fully competitive telecommunications infrastructure, or whether it wants to continue to protect publicly owned or controlled national telecommunications equipment providers and networks who are not fully competitive. Ultimately, we believe that as Europe liberalizes its telecommunications sector, it will also open up to competitive foreign products and services. NAM supports a U.S. policy that will firmly encourage the EU to move in this direction.

2) U.S. actions, including negotiations conducted under the authority of Title VII, have achieved some important breakthroughs with respect to the European market. The major sectoral success so far is the elimination of discrimination in the area of electrical utilities. USTR has not moved to harsher sanctions so far with respect to telecommunications and other public procurement sectors, because we have succeeded in opening some new areas and building on the GATT Government Procurement Code.

NAM RESPONSES TO ADDITIONAL QUESTIONS ON GOVERNMENT PROCUREMENT CODE ISSUE (Continued)

Ques. NAM Response:

It is important to remember, with respect to Europe, that EU authority over the utilities only dates from 1990, and that telecommunications liberalization in Europe is only just beginning. USTR may not want to flush the quarry by trying to push too far, too fast. We are disappointed that the telecommunications sector was not included in the first round of US-EU agreements, but as long as we can achieve progress in gaining access for U.S. interests to the ongoing liberalization in Europe, we are willing to continue negotiations. If negotiations fail, any legal U.S. response under Title VII and consistent with our international obligations should be considered.

3) The NAM has not yet supported linking European access in Defense Department procurement to the telecommunications procurement issue. While such a policy may be considered, latest GAO estimates indicate a 2:1 U.S. trade advantage in defense goods with Europe. Thus, we would also have to consider the costs of probable European retaliation in defense trade.

4) Again, the NAM remains extremely disappointed that telecommunications was not included in the recent Government Procurement package. However, our organization continues to support the package that was achieved as an important step forward. The NAM will continue to support before Congress both the Government Procurement Agreement and the broader GATT Uruguay Round agreement.

5) Most countries, including the United States, practice some form of discrimination against foreign-source products in government procurement. The GATT agreement also allows such discrimination, though in the Government Procurement Code, a group of GATT signatories has agreed to suspend on a limited basis such discrimination for the products and services of other signatories, who have made equivalent concessions.

Title VII must be applied by choosing the best targets of opportunity, given limited negotiating resources in an environment where government procurement discrimination is widespread. In its most recent report, the USTR has sanctioned, cited or warned Europe, Japan, Brazil, Australia and China regarding discriminatory government procurement practices. These are all important markets with egregious problems. U.S. success in encouraging and negotiating improved access to those markets will send a strong signal not only to these countries, but also to other trading partners. If we are to pursue even this number opf complaints aggressively, however, we also need a stronger commitmentcommitment to the allocation of sufficient negotiating resources.

NAM RESPONSES TO ADDITIONAL QUESTIONS ON GOVERNMENT PROCUREMENT CODE ISSUE (Continued)

Ques.	NAM Response:
(No "question 6")	
7)	The NAM has no comment on the Administration's approach to Japan, pending the outcome of the next round of Framework discussions.
(Section IV)	A number of questions are listed under the general heading of future utility of Title VII. Generally, the NAM believes that Title VII has been used in an appropriate manner, namely to encourage foreign parties to undertake negotiations to expand both their GATT and their bilateral commitments. In general, we believe that Title VII can be used effectively to encourage trading partners to abide by GATT Code commitments, or to expand or undertake such commitments. Foreign trading partners may object to negotiate under the pressure of unilateral threats. We therefore feel at the NAM that Title VII is most effective, if it leads to consultations and negotiations under GATT rules, a procedure that is allowed under Title VII.

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